

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ECLIPSE LIQUIDITY, INC.,)	CASE NO: 4:15-CV-01645
)	
Plaintiff,)	CIVIL
)	
vs.)	Houston, Texas
)	
AVOR NAVIGATION LTD., ET AL.,)	Tuesday, February 9, 2016
)	(1:44 p.m. to 4:10 p.m.)
Defendants.)	

EVIDENTIARY HEARING

BEFORE THE HONORABLE FRANCES H. STACY,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff:	GEORGE A. GAITAS, ESQ. Chalos and Co, PC 7210 Tickner Street Houston, TX 77055
For Defendants:	NEIL QUARTARO, ESQ. Watson Farley & Williams, LLP 250 West Fifty-Fifth Street New York, NY 10019
Court Recorder:	Paul Yebernetsky
Clerk:	Beverly White
Transcriber:	Exceptional Reporting Services, Inc. P.O. Box 18668 Corpus Christi, TX 78480-8668 361 949-2988

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1 Houston, Texas; Tuesday, February 9, 2016; 1:44 p.m.

2 Call to Order

3 **THE COURT:** Good afternoon, please be seated.

4 **MR. GAITAS:** Good afternoon, your Honor.

5 **THE COURT:** How are you? All right, we have a new
6 hearing in Case Number 2015-01645, *Eclipse Liquidity, Inc.*
7 *versus Avor Navigation, Ltd, et al* and we just set oral
8 arguments on a Motion to -- this is Document Number 16, a
9 Motion to Dismiss Complaint and Vacate Attachments filed by
10 *Advantage Arrow Shipping, LLC, Advantage Holdings, LLC,*
11 *Advantage Tankers, LLC and Forward Holdings, LLC.*

12 A Response was filed on August the 20th, and so the
13 -- the plan is for each side to have an hour and a half to
14 present argument, and you've told me you're not going to
15 present any evidence?

16 **MR. SPEAKER:** Correct, your Honor.

17 **THE COURT:** Okay, so will each side announce
18 everybody's name at your table, please?

19 **MR. GAITAS:** I am George Gaitas. I appear for the
20 Plaintiffs and with me is my learned associate, Mr. Jonathan
21 Chalos.

22 **THE COURT:** Hi. How are you?

23 **MR. CHALOS:** I'm good.

24 **MR. QUARTARO:** Good afternoon, your Honor. Neil
25 Quartaro, Watson, Farley & Williams, New York, for Defendants

1 Advantage Arrow Shipping, Advantage Tankers, LLC, Advantage
2 Holdings, LLC and Forward Holdings, LLC.

3 I am joined today by two colleagues from Phelps
4 Dunbar directly across the square from the Court, your Honor,
5 Marc Matthews and Brian Wallace.

6 **THE COURT:** All right, thank you for appearing.

7 So the Motion, because it was filed by the Defendant,
8 I will hear your argument first.

9 **MR. QUARTARO:** Thank you, your Honor.

10 **THE COURT:** And you can stand or sit, whatever makes
11 you happy, as long as you're near a microphone and the
12 microphone is pointing at you.

13 **MR. QUARTARO:** How's that, does that seem good? I've
14 never been accused of not being able to be heard even in a
15 courtroom this size --

16 **THE COURT:** Good.

17 **MR. QUARTARO:** -- so I'm hoping everyone can hear me,
18 but I'm conscious of the fact that there's probably a court
19 reporter maybe somewhere who is taking notes.

20 **THE COURT:** He's right here. How does it sound,
21 Paul?

22 **MR. QUARTARO:** So you think you can hear me fine?
23 Excellent. Okay, well, thank you. Thank you, your Honor.

24 I think before we go a whole lot further here I think
25 a procedural posture in this case should be clarified to your

1 Honor, and I think that would probably be helpful.

2 What we have are a number of complaints that the
3 Advantage Defendants, which are our clients, move to dismiss.

4 **THE COURT:** Okay.

5 **MR. QUARTARO:** However, intervening events, largely
6 the posting of security in those cases and the underlying
7 arbitrations in England has resulted in what we've termed the
8 "initial Complaint" as being largely moot.

9 However, before your Honor -- with one exception
10 which has not yet been withdrawn --

11 **THE COURT:** Security has been posted or is going to
12 be posted?

13 **MR. QUARTARO:** Has, your Honor.

14 **THE COURT:** Thank you.

15 **MR. QUARTARO:** Thank you. So there is, I believe, a
16 live Complaint before your Honor, that's the Psara, spelled
17 with a P, P-S-A-R-A Energy, Ltd Complaint which I understand
18 will be dismissed due to the provision of security in that
19 case, and the proposed Supplemental and Amended Verified
20 Complaint by Tank Punk, Inc. which ostensibly would amend their
21 initial Complaint going back to June or July of this year -- of
22 last year, I forget exactly when that one was filed.

23 So procedurally we're a little bit awkward, your
24 Honor. We have a Motion to Dismiss three Complaints, two of
25 which are already gone, the third one of which remains live

1 before your Honor.

2 We have another pending Amended Complaint before your
3 Honor.

4 That said, I don't think the lack of procedural
5 niceties here, if you will, is a challenge to resolving any
6 issues today. The reason I believe that is as follows:

7 The allegations, particularly with respect to alter
8 ego in the proposed Amended Complaint are identical to the
9 initial Complaints, the alter ego argument is the same.

10 Counsel for the Plaintiffs, whom we know, I have
11 worked across from many times, and ourselves, conducted
12 discovery in accordance with the Court's Order realizing that
13 these initial Complaints are being resolved by the parties by
14 the provision of security in England and the prosecution of the
15 arbitrations there.

16 That said, we didn't want to lose the hearing date,
17 these are very important issues. My client has several million
18 dollars tied up in this Court, your Honor, and some other funds
19 tied up in the Eastern District of Texas, all of which are
20 wrapped up into the same set of allegations which functionally
21 are the Geden Defendants, and if we look at the caption we
22 really appear to have two, in this case Spike Shipping, looking
23 at the Tank Punk Complaint, your Honor, and Genel Denizcilik
24 Nakliyatı, A.S. which Plaintiff's have a a.k.a of Geden Lines,
25 and which we have referred to in our papers as Genel in order

1 to separate them.

2 So we've got -- we've got this pending -- this
3 pending Complaint that's got the same alter ego allegations,
4 and we went ahead and we did discovery on it, your Honor. We
5 conducted four depositions, several thousand pages of documents
6 have been produced, three Defendants were deposed in London,
7 England several weeks ago and the attorney -- an in-house
8 attorney for Plaintiffs, Ms. Desbalita Baca (phonetic), who
9 verified the Complaints before your Honor, was deposed by a
10 video with myself in New York and her presence here in Houston
11 that is, of course, ably assisted by the folks at Phelps Dunbar
12 in conducting that deposition.

13 So technically one way to look at this case is that
14 on the underlying Complaint here, the Psara Energy Complaint,
15 the Plaintiffs are technically over-secured because they're
16 proceeding in a limited secured, but they want the security, as
17 I understand it, that's been posted in this case here before
18 your Honor to be applied to the proposed Supplemental and
19 Amended Verified Complaint.

20 **THE COURT:** And one of the claims was already paid
21 out of the funds?

22 **MR. QUARTARO:** I believe actually what happened was
23 money was -- was provided as security before those -- before
24 those arbitrations started.

25 **THE COURT:** All right. I'm sorry, I interrupted you.

1 **MR. QUARTARO:** No, no, no, of course, not at all.

2 And I assume that as I spoke, you know, Counsel is
3 always hopeful that the game plan that they had developed will
4 be listened to completely during oral argument. That's never
5 actually happened to me so I assume that your Honor will have
6 some questions as we go along and to the extent I'm able, of
7 course, I'm prepared to answer them.

8 **THE COURT:** Thank you.

9 **MR. QUARTARO:** So, procedurally, I think we can
10 address the Psara Energy Complaint because the relevant alter
11 ego allegations are the same.

12 Alternatively and, of course, the Court may have
13 other ways that it wishes to view these, these are all the
14 Counsels' thoughts, alternatively the Court may wish to review
15 the proposed Amended Complaint and the evidence presented there
16 and determine whether there is a basis to allow that.

17 **THE COURT:** Okay.

18 **MR. QUARTARO:** But we submit, of course, your Honor,
19 that there is not our (indiscernible) opponents submit, of
20 course, that there is.

21 So it's not 100 percent clear how we handle this. We
22 could address the alter ego allegations on the Complaint that's
23 still before your Honor, and should be there a ruling on those
24 issues that would be res judicata in respect to the proposed
25 Amended Complaint.

1 Alternatively your Honor could convert that to be a
2 Motion for Summary Judgment which I think procedurally is
3 actually probably where we are with respect to that underlying
4 Complaint.

5 In the alternative to that your Honor could determine
6 whether there is, in fact, an appropriate Factual Basis to
7 allow the Plaintiffs to file this proposed Amended Complaint
8 and to obtain their Rule B action papers that they seek in that
9 matter.

10 The sum and substance, though, I think, is that since
11 the initial Complaints are or will be dismissed the resolution
12 of the allegations in the proposed Amended Complaint determines
13 whether or not this matter will stay before this Court. I
14 think that's -- at the end of the day that's where we wind up.
15 If your Honor determines that there are, indeed -- there is,
16 indeed, a prima facie case and that the evidence supports the
17 alter ego allegations, maybe we (indiscernible). If your Honor
18 determines that that's not the case I think the two Complaints
19 go away and we're off your Honor's docket.

20 Except, of course, if the underlying claims move to
21 England pursuant to the relative arbitration clauses, I believe
22 arbitrations are ongoing in certain all of the underlying
23 Complaints. I'm not clear whether the issues that have been
24 alleged in the proposed Amended Complaint have been brought to
25 arbitration yet in England. I believe that that has commenced,

1 but it hasn't gotten very far, it's only -- this Complaint
2 was filed November 20, so it's still the early days.

3 So before I move to kind of the meat, I think, of
4 today's hearing, and I do really think that the meat of today's
5 hearing is the evidence, right? I mean, we've got the law, we
6 briefed that to your Honor. You've got the papers in front of
7 you. I don't think there's even very much disagreement on the
8 standard. I mean, this is -- will be attachment in all three
9 of those cases. Suffice it to say not the first time these
10 matters have been before the Southern District of Texas,
11 probably not the first time it's been before your Honor. So I
12 think, you know, in terms of the law I don't think there's a
13 whole lot of dispute there. I think on the facts, of course,
14 there is.

15 **THE COURT:** Oh, my -- I'm also going to consider, how
16 are you going to dismiss the original Complaints?

17 **MR. QUARTARO:** I'm sorry, how am I?

18 **THE COURT:** How? Yes.

19 **MR. QUARTARO:** I would have to rely on the Plaintiffs
20 to do that and that's probably a question and that's more
21 appropriately directed to them.

22 **THE COURT:** Do you intend to dismiss them? The
23 original Complaints?

24 **MR. GAITAS:** Your Honor, in these instances where
25 there's no claim, no underlying claim, there's no need for

1 securing. Yes -- but understand. We will sign the
2 dismissal -- (indiscernible) parties will sign the dismissal
3 (indiscernible). But those that are live and there is a need
4 for securing, we're not.

5 **THE COURT:** Of course. You don't agree.

6 **MR. QUARTARO:** And, perhaps, your Honor, we can just
7 clarify that in this case that would be the dismissal of the
8 Psara Energy, Ltd Complaint, 15-cv-01673, which would leave
9 before your Honor the proposed Amended Complaint in 15-cv-
10 01675, do I have that correct, Mr. Gaitas?

11 **MR. GAITAS:** I think and I think also the Eclipse
12 Complaint and the Psara Energy. I don't see any live claims on
13 these, as I recall, and that's -- I'm just relying on my
14 memory, and I'd have to go and look in the files, but these
15 concern unpaid hire. And the hire --

16 **THE COURT:** Unpaid what?

17 **MR. GAITAS:** They're both charter hire.

18 **THE COURT:** Hire. Eclipse and which other one?

19 **MR. GAITAS:** It is the Eclipse, your Honor, and the
20 Psara Energy, Ltd, the second one in order from the top.

21 **THE COURT:** Thank you.

22 **MR. GAITAS:** So the one that is left that has
23 substantive issues and needs security is the one of Tank Punk,
24 Inc., the Spike Shipping, et cetera, but the arguments and the
25 issues are identical as to all three so it's not material

1 whether we dismiss them or we don't dismiss them for purposes
2 of the hearing today.

3 **THE COURT:** Right.

4 **MR. QUARTARO:** I'll get into that a little more, your
5 Honor. I'm not 100 percent sure that -- I'm not 100 percent
6 sure I agree with the importance, but I would certainly state
7 as a general matter we're basically satisfied and have no
8 problem working with opposing Counsel. I believe there's two
9 stipulations of dismissal already have gone through and those
10 cases are gone, and I'm sure we can work out the other one.

11 With the Motion to allow the filing of the proposed
12 Amended Complaint it didn't make sense to try and move to force
13 that Complaint to be dismissed while the proposed Amended
14 Complaint is pending, that's the purpose of it and we
15 understand and respect that. We need a ruling in order to
16 proceed.

17 **THE COURT:** Okay.

18 **MR. QUARTARO:** Does that -- does that put us in a
19 comfortable place procedurally to have a commitment from the
20 Bench obviously, but I think I've explained it so that the
21 relevant -- the relevant thing that's before the Court is the
22 proposed Supplemental and Amended Complaint?

23 **THE COURT:** Right.

24 **MR. QUARTARO:** Right. Now, Mr. Gaitas did mention
25 that there is no difference.

1 There is actually one difference and I'd like to
2 point that out in a moment, but I'll circle around so that I
3 think you have it -- you have it in the papers. But perhaps I
4 might say a word on the legal standards before -- before we go
5 further without inflicting any lengthy citations on the court
6 or on our court reporter.

7 Our view is straightforward. The Plaintiffs have an
8 uphill climb, your Honor, and they have an uphill climb for two
9 reasons.

10 First of all, they have alleged an alter ego
11 structure. The case law is very clear, piercing the corporate
12 veil is an extraordinary remedy reserved for special
13 circumstances, and we would argue, your Honor, there are, in
14 fact, no special circumstances here. But in any event the
15 requirements to pierce the corporate veil are -- so that would
16 be our first goal.

17 Our second point, which sort of folds into the first,
18 is that in order to obtain the Rule B attachment Plaintiffs
19 have to show reasonable grounds, and if they neither make out a
20 prima facie complaint, which we argue they do not, or if the
21 evidence that we've developed fails to support the proposed
22 Amended Complaint then we have a reasonable basis for an
23 attachment.

24 The underlying Complaint we'll consent to the
25 dismissal of that today or whenever your Honor rules on the

1 proposed Amended Complaint and that would be the end of it from
2 our perspective, obviously. I expect the opponents have a
3 different view.

4 So that's -- that's where we see the standard and we
5 think it's very, very important at this juncture, and I'm going
6 to come back to it a couple of times because we think it's
7 very, very important to identify for your Honor the fact that
8 there is a missing party in the caption and, of course, this is
9 laced throughout our papers, but that party is Geden Holdings,
10 your Honor.

11 Geden Holdings is not named as a Defendant here and
12 that's for a very simple reason, that reason is Geden Holdings
13 is present in the Southern District of Texas. If Geden
14 Holdings was named as a Defendant the Plaintiffs would have to
15 swear a Rule B affidavit that says "None of the Defendants
16 against whom we seek security here in the Southern District are
17 present." They can't do that if they name Geden Holdings.

18 That's a very serious omission, your Honor, and it's
19 the only fact that leaves this case before your Honor. There
20 are other reasons to dismiss, but that's a pretty -- that's a
21 pretty important one, that's a pretty major one you're missing
22 from the caption.

23 But I'm going to show your Honor a graphic in a
24 couple of minutes that's repeated in a number of the papers
25 that the parties have produced, and you can see Geden Holdings

1 is a key link in the chain. Once we pull that company out of
2 the chain of alleged alter egos the alter ego argument falls
3 apart.

4 So what facts did we develop?

5 Well, Plaintiffs had characterized Geden Holdings
6 and, again, this is key, and your Honor is going to see during
7 the presentation and as your Honor reads the papers there's an
8 effort to blur the lines between Genel and between Geden
9 Holdings. They are completely separate companies and we're
10 going to show your Honor the organization chart, the effort to
11 blend those two companies is obvious because if the perception
12 that Genel owned the vessels of which Plaintiffs complained is
13 accepted then it's sort of gone away without naming the actual
14 owner, and actually their contract counterparty, so it's very
15 important, I think, to sort of keep those two things front and
16 center.

17 So, you know, the basic allegations here are pretty
18 straightforward. Plaintiffs allege that the Geden Defendants,
19 principally Geden Holdings, sold a number of vessels that it
20 owned over a period of time including 11 oil tankers, and for
21 the purposes of today let's just call those the "vessels"
22 because I don't think any of us care about the other 49-odd
23 ships, it's 11 oil tankers that Plaintiffs complain were sold
24 by Geden Holdings, more specifically special purpose companies
25 owned by Geden Holdings, each one of which owned a ship, to the

1 Advantage Defendants.

2 And Plaintiffs contend that that sale allows them to
3 pierce the corporate veil because they were disadvantaged by
4 it, and because they have their various alter ego allegations.
5 You need both in order to -- in order to proceed. You have to
6 show that on the one hand there was a domination and control of
7 the subsidiary by a parent and on the other hand that that
8 domination and control was used to disadvantage the complaining
9 party, so that's kind of our standard, right, first is there
10 domination and control; second, we can go down the road of is
11 there a disadvantage.

12 Now, in fact, when we went and deposed the -- the
13 principals of Advantage, and it should be noted they -- two of
14 them, Mr. Mehmet Mat, Mr. Tugrul Tokgoz, are also CFO and CEO
15 respectively of Genel and Geden Holdings. So we deposed these
16 two and we deposed the 85 percent equity owner of the Advantage
17 Defendants, Ms. Nazli Williams, and what -- what came out of
18 that deposition is simply a straightforward story of Geden
19 Holdings trying and failing to restructure its business
20 whereupon it sold its assets, fairly straightforward.

21 Plaintiffs are trying to contend or trying to argue
22 that this attempted restructuring by Geden had been the sale of
23 the vessels to Advantage are all part and parcel of the same
24 restructuring, but they're not.

25 The evidence shows very clearly that Geden Holdings,

1 like a lot of shipping companies, had problems post-
2 (indiscernible). Charter rates collapsed, they're having
3 trouble making ends meet.

4 So what did they do?

5 They did what any business would do, first thing went
6 out and tried to raise some money.

7 Attached to the proposed Verified Complaint at
8 Exhibit 3 is a Prospectus by a company called "Universal
9 Maritime."

10 Universal Maritime and, you know, the prospective
11 makes for -- Prospectus makes, frankly, for kind of boring
12 reading, but the upshot of it is they want to go out to the
13 Norwegian bond market, which is hot for shipping -- was hot for
14 shipping, and issue a bunch of Norwegian Kroner denominated
15 bonds, raise some money for Universal, get the vessels sold to
16 Universal and, thus, be leveraged again a balance sheet.

17 Unfortunately, that didn't come to fruition, they
18 weren't able to get sufficient underwriting, they weren't able
19 to have the bond issue that's come to fruition. They tried and
20 it didn't work.

21 So next what did they do?

22 They go and they talk to their lenders. Exhibit 4 is
23 a document called "Project Hermitage Restructuring."

24 So what happened in there?

25 Again, the testimony is very clear, it's all cited to

1 your Honor in the papers. The testimony is very clear. The
2 parties went to their banks, said, "Okay, we couldn't spin off
3 some of these assets, refinance them, inject some more money
4 into another company and deleverage our balance sheet, that's
5 not going to work. Can you guys make a deal? You know, we've
6 got to reduce our loan repayments, we need to extend
7 amortization, we've got to do something else, you know, we're
8 going broke."

9 The lender said fairly straightforward "You need an
10 independent business" or "you've got to go out and get a FA, a
11 financial advisor and propose some restructuring, take a look
12 at it, but that's how you -- you're going to have to go do
13 that."

14 That's exactly what they did. They went out, they
15 retained AlixPartners, AlixPartners produces this independent
16 business review really for the benefit of the banks. The banks
17 look at it and, frankly, there's no monthly restructuring
18 proposal. There was a half a dozen banks involved in that
19 facility. Apparently a couple of them were prepared to go
20 along with the restructuring, a couple of them wanted to get
21 paid out, they didn't want to extend, they didn't want to even
22 take interest only payments for a period of time, they weren't
23 interested in doing that.

24 So what did that leave as an option for Geden?

25 One thing, you've got to sell your assets, and that's

1 what they started to do. In fact, over five or six years they
2 sold almost 60 ships, they're down to one which is a
3 nonfunctioning bulker that's apparently wrecked on the coast of
4 Tunisia, your Honor. So they -- they've sold off almost all of
5 their shipping assets, although they still have some vessels
6 chartered, again, that they've chartered out at favorable
7 rates, they make a little of money, but they're not a ship
8 owning company, really, for all intents and purposes anymore.

9 So, interestingly, although my opponents characterize
10 this as a sinister restructuring plan, the Universal Prospectus
11 is publicly available, it's shopped all over the country and in
12 other places in order to obtain underwritings (indiscernible)
13 interest in the bond issuance, which doesn't work.

14 The Alix plan is circulated widely among the five
15 banks or six banks that were financing Geden at the time, this
16 is hardly a sinister secret plan when we've got publicly issued
17 bond prospectus on one hand, and a third party restructuring
18 proposal circulated among numerous parties on the other hand,
19 so we're not talking about some sort of behind the scenes,
20 shuffle assets around type of situation, but we've got a series
21 of legitimate restructuring attempts, none of which really
22 worked and which resulted in the ships ultimately being sold.
23 I don't think any of these factors are seriously in contention,
24 your Honor.

25 So I think at this point it's clear that the entity

1 that's central here is Geden Holdings, right? That's the
2 company that owns these ships, that's the company that sells
3 these ships and that's the company that my opponents allege is
4 the one that cost their -- or that didn't pay their claims.

5 And it probably helps just for a minute to take a
6 look at the corporate structure. I circled Geden Holdings in
7 red because they're such an essential link in this chain,
8 although we have to draw another theoretical link which I'll
9 fill in in a moment for your Honor, so there's actually two
10 missing links here, but we probably only need to focus on the
11 one for now.

12 So the Geden SPVs are the companies that own these 11
13 oil tankers, right, there's 11 of them hanging underneath;
14 factually, initially, about 60, but the ones we care about are
15 only the 11 oil tankers SPVs. They're owned by Geden Holdings.
16 That's alleged, by the way, in the proposed Complaint, your
17 Honor, right there, right here at Paragraph 26 I believe it is,
18 Defendants -- 24, I'm sorry, Paragraph 24:

19 "The company holding the shares of the Geden fleet of
20 tankers was the Maltese holding company Geden
21 Holdings, Ltd.," right?

22 It's easy, by the way, to get this confused, my
23 opponents did it themselves. If you look at Page 9 of their
24 Evidentiary Brief, Geden Holdings is the successor entity, or
25 Advantage Tankers, I'm sorry, is the successor entity to Geden

1 Holdings, but they're not on the caption.

2 Again, why? Because it destroys Rule B jurisdiction
3 here, that's why they're omitted, your Honor.

4 So when we look at this chain this is what the
5 Plaintiffs are alleging. The Geden SPV sold their ships to
6 really the Advantage SPVs, right? That's very common, not just
7 in real estate, but in shipping, the holding company opens a
8 series of limited liability companies, each one holds an asset.
9 It's a very common corporate structure. In fact, it's not just
10 real estate, there's all sorts of assets that are held that
11 way.

12 So these SPVs are sold over to the -- or these ships
13 are sold over to the Advantage SPVs. Geden Holdings, the
14 proposed Amended Complaint alleges, owes the Plaintiffs money,
15 that's their claim. They returned a ship on August 9th, and
16 that date is important, and I'll come back to it, your Honor,
17 August 9th, 2015. Apparently there was some dispute over the
18 condition of the ship and whether a coating was put on the
19 bottom of it of sufficient length, and whether Geden Holdings
20 is liable for the theory the ship had to be properly coated,
21 that's the sum and substance which, by the way, is one of the
22 reasons why I disagree that those initial Complaints and the
23 proposed Amended Complaints have the same facts. They do not.

24 The proposed Amended Complaint has a cause of action
25 that accrued on August 9th, 2015 when that vessel was returned

1 to the Plaintiffs. All of the other Complaints were filed
2 before and involved a charter hire. Accordingly, that proposed
3 Amended Complaint has a different cause of action than the
4 initial Complaints, and what Plaintiffs are really trying to
5 do, and we have this in our papers as well, of course, your
6 Honor, is relation fact. They're basically saying "Well, your
7 Honor, we filed in June or July, we've dismissed that
8 Complaint. I want to amend it -- or we're going to dismiss
9 that complaint, I want to amend it and I want to amend it with
10 a cause of action that accrued on August 9th, but I want my
11 security that I got back in June." And, obviously, we have a
12 problem with that, your Honor. We don't think that that
13 relation fact is appropriate. We have a separate issue with
14 it, as well, which I'll highlight for the Court in just a
15 moment.

16 So to continue with Plaintiffs' seeming allegations,
17 Geden Holdings is then owned by a fellow named Emin Karamehmet.

18 Mr. Karamehmet is a well-known Turkish industrialist.
19 Unfortunately for him he happens to be at odds with the current
20 Turkish leadership; let's just say Turkey has something that
21 could happen these days. Among other things he owns a large
22 media company.

23 His daughter, different last name, she's married,
24 Nazli Williams, is approached by Mr. Tabruz (phonetic) when it
25 becomes apparent that the banks will not restructure the debt,

1 and Mr. Tabruz knows that the tankers, the 11 tankers that are
2 owned by the respective Geden SPVs are worth just a little bit
3 more than what we might call book value, and the reason for
4 that is that they are chartered by Shell, a long term charter
5 with Shell and it's self-evident that an asset that is being
6 utilized by a company like Shell, what we would call in the
7 industry a gold standard charter, no matter what happens,
8 right? Checks from Shell are going to clear, you know, they're
9 not going to stiff their charters. And, in fact, they have a
10 reputation as such and they're not the only one, you can go to
11 a bank with that charter and you can obtain financing because
12 you can say to the bank "Hey, this ship isn't going to trade on
13 the market, Shell is taking it so we're guaranteed whatever the
14 hire is, \$20,000, hey, your debt payments are assured, it's
15 getting a better rate," so it actually even functions as
16 security having a charter like that.

17 In any event, Mr. Tabruz approaches Ms. Williams
18 about creating a new company to buy these 11 oil tankers and
19 Ms. Williams testified -- she's got actually a fair amount of
20 experience. She's got a communications degree, she started at
21 a communications company, worked her way up, eventually got a
22 executive role. Because of her great wealth, and she is, you
23 know, unlike me, born into a very wealthy family, and I'm sorry
24 to say my trust fund has like \$9 in it, Ms. Williams, perhaps,
25 has significantly more. But my point is when you -- when you

1 look at her testimony this is not -- and she, frankly, had the
2 best quote probably in the entire case, this isn't
3 (indiscernible) the board room, right, there's a career
4 progression where Ms. Williams is on very serious boards of
5 directors including Turk Cell which is a very major cell phone
6 company in Turkey, so an experienced woman and a woman of
7 significant means, significant wealth.

8 And so Mr. Tabruz says "You know, gees, we have these
9 ships. There could be an opportunity. We'll have to set up a
10 new company, we're going to have to buy, though. But if you're
11 interested in investing there could be a real opportunity
12 here." And Ms. Williams is interested, but she doesn't want to
13 take the full risk and that's understandable because the
14 charters with Shell at that time were actually at a very low
15 rate, so if the market went up you were good; if the market
16 went down they'd have problems meeting their debt obligations
17 and eventually you would reach a point where maybe a lender
18 would foreclose and you could have your investment like that.

19 So what she initially said, it's pretty clear, "Let's
20 do a joint venture, I don't know if I want to take this risk on
21 myself, this is a lot of risk, it's a 200 million dollar equity
22 investment."

23 Mr. Mat, the CFO of both Geden Holdings and Genel,
24 and eventually hired by Ms. Williams for her companies, says
25 "Well, I do have some private equity branches in New York.

1 Let's go to New York, we'll meet with a couple of funds, maybe
2 we could get a joint venture going."

3 So they go and they meet with Northern Shipping Funds
4 and (indiscernible) and they start to have talks. They get as
5 far, actually, as creating a possible joint venture vehicle,
6 Future Holdings, LLC. These names are always sort of
7 optimistic -- you know, you should speak to the future in some
8 sort of way, and this one does exactly that. So they form
9 Future Holdings, but really they don't want to have anything
10 that deal with the hedge funds. It's not entirely clear what
11 the reason was, it seemed to come out in the deposition that
12 they felt perhaps the hedge funds were overreaching in terms of
13 what they wanted for their return. So the deal with the hedge
14 funds falls apart.

15 At the same time it should be recognized it will take
16 a lot more than 200 million dollars to buy these ships, it
17 takes a little bit more like 600 million dollars to buy these
18 ships. The reason that we're talking about an equity injection
19 of 200 million is they're simply going to finance the rest of
20 it and, again, pretty common, right? You have an equity
21 injection, you have a debt component, it's a rather common
22 structure for many asset acquisitions. That's exactly what
23 they were doing here.

24 So they're talking with Centerbridge and
25 INSUFFICIENT, let's do a joint venture, they're talking with

1 some lenders. Critically, though, your Honor, not all the same
2 lenders as with Geden. There were a couple, but there is not
3 that many shipping banks in the world, but there is new lenders
4 that they're talking to.

5 So, unfortunately, the private equity joint venture
6 goes away and Mr. Tabruz knowing that Ms. Williams has
7 expressed reluctance to take on sort of the entire risk of this
8 venture and the variable charter goes to Shell. He says "Look,
9 can we negotiate a different charter if I get new owners? If
10 these ships are sold will you do a charter with the new owners,
11 but it can't have much risk in it. So here's what -- here's
12 the offer, we'll do a floor rate on the charter and any market
13 upside we'll split. So I can go back, I can say to the
14 lenders, I can say to Ms. Williams, look, we have five-year
15 deals with Shell, we've got a base, we know what the floor is.
16 That's enough to pay the debt, service and to operate the
17 company. We're assured of that. If the market improves,
18 great, we have what they call just a little bit
19 (indiscernible), you know, a little extra because we'll be able
20 to -- we won't get it all because we have to share with Shell
21 in order to get a base rate but, you know, we have an upside
22 here and we have very little downside for the next five years."

23 On the basis of that Ms. Williams agrees to inject
24 the entire equity portion into Advantage tankers, and that's
25 just what happens.

1 Now I would ask -- I would ask your Honor if -- if
2 the -- if you would have the Quartaro declaration handy, and --

3 **THE COURT:** No, I didn't bring all of those documents
4 here.

5 **MR. QUARTARO:** I can't blame you, we didn't bring all
6 of our documents either and there was rather a lot of them.

7 **THE COURT:** Right. They're in my office, so --

8 **MR. QUARTARO:** Okay, well --

9 **THE COURT:** And all the binders, but is there an
10 identifying number?

11 **MR. QUARTARO:** Yeah, let me just steer you right to
12 the exhibit and it probably makes more sense to perhaps even
13 delegate it, it's just similar accounts what I'm about to
14 suggest.

15 What I have is Exhibit 1, actually, has a cover page,
16 and this will probably help to summarize it, this shows, and
17 this is the cover page, the Quartaro Dep Exhibit 1, and if you
18 go through Quartaro Dep Exhibit 1 what you'll see is, first,
19 this chart that I've shown your Honor here.

20 Second, you'll see a series of documents for each
21 vessel. And those documents largely consist of a Bill of Sale
22 for the ship and two payments, payment records totaling the
23 price of the ship.

24 And what could be done, and what I quite honestly
25 tasked somebody else with doing for me, is you could see from

1 those wire records two dates. Remember I showed that the Geden
2 SPV, the ships are actually owned by SPVs. The structure,
3 actually, is that each SPV has a bank account and the lending
4 bank has a security interest in that bank account, so the
5 payment of the sale price for each vessel is actually
6 bifurcated. The debt component goes to the bank so that they
7 can clear off the mortgage. This all happens, by the way,
8 contemporaneously, it's -- it's the equivalent of trading a
9 marble to a kid you didn't really trust, so you kind of want to
10 each snatch the marble at the same time except you've got a
11 crude oil tanker in one hand and \$50 million dollars in the
12 other but the concept actually is exactly the same.

13 So the banks get the money, they release the
14 mortgage. The new bank, which has financed at least a good
15 portion of that, then puts its mortgage on, everybody is
16 protected, the marbles are exchanged contemporaneously.

17 At the same time, though, these vessels were not
18 completely under water with that. An equity component,
19 significant equity components totaling almost 200 million
20 dollars actually, those payments are also made to Geden
21 Holdings.

22 So what you can see, in sum and substance, from
23 Exhibit 1 is all 11 vessels are paid for in full, in cash, with
24 the debt component going to the lenders and an equity component
25 going to, unsurprisingly, our good friends at Geden Holdings.

1 This functionally is what Plaintiffs complained of, your Honor.

2 That really brings us, I think -- and I'm sorry, just
3 let me keep my Declaration together here, that really brings
4 us, I think, your Honor, to the only remaining question on the
5 money, and I apologize, Quartaro Exhibit 3 should have had this
6 on the cover, and perhaps, Ms. White, if I could -- thank you.
7 Gentlemen, I know you have many copies of this.

8 **THE COURT:** Thank you.

9 **MR. QUARTARO:** This is Exhibit 8 to the Nazli
10 Williams deposition, your Honor, and it's also marked
11 Defendant's 05192 as produced by the Defendants during the
12 course of discovery in this action. You can see from the
13 number there was significant discovery, we did start at zero,
14 so lots of documents, your Honor.

15 And as you go through this you can see, and I'm
16 informed, although like my trust fund, my Turkish is weak, but
17 I am informed (indiscernible). And if your Honor just looks at
18 this summary you can see very, very significant sums of money
19 moving into, and if you look at the upper right hand portion of
20 the statement, your Honor, where I'm pointing the account is
21 Forward Holdings, right?

22 **THE COURT:** Right.

23 **MR. QUARTARO:** And when we turn our attention to the
24 Advantage structure we have Forward Holdings, holding --
25 Advantage Holdings which then runs the tanker fundings, so

1 she's injecting her capital into Forward Holdings, and if we
2 total all of this up we get 195 million dollars 350,000 --
3 yeah, 195,350,000, your Honor.

4 This record is uncontroverted, there was no
5 countervailing evidence. There may be supposition, but there
6 is no actual evidence.

7 So the evidence proves Ms. Williams injected the
8 money into the companies. The evidence proves that the
9 Advantage Defendants paid Geden. They covered all the debt,
10 they covered all the equity, they were paid in full.

11 The only piece that might be attacked in here, which
12 Plaintiffs have not challenged in any way, shape or form, the
13 sale price of the vessels. The sale price of the vessels is
14 all established by a third party valuation service, well-known
15 in the industry called Clarksons.

16 Again, there is no evidence on the record before your
17 Honor or anywhere in the case that any of these sale prices did
18 not, in fact, reflect a then current market value of the
19 vessels, not a scintilla of evidence there.

20 I would like to point out, though, there is one
21 discrepancy, I believe it's Advantage Solar, the sale price
22 listed on the Bill of Sale appears to be incorrect, they
23 received slightly more, about a million dollars more. I
24 understand that had to do with the actual condition of the
25 vessel although we're talking about more money going to Geden

1 Holdings, not less, it's difficult to see how the Plaintiffs
2 could possibly be disadvantaged by that.

3 So -- so we've got no doubt the money went in the
4 company, we have no doubt that the Advantage companies paid
5 fair market value over to the Geden -- over to Geden Holdings,
6 our missing Defendant, right? I mean, it's almost appropriate
7 they'd have a missing chair. You're (indiscernible) because
8 Geden Holdings is the party that should be in the room, but
9 they're not, so there's no doubt about that. The -- the
10 investment went in, Geden Holdings received the full market
11 value of its vessels, it paid off its lenders and it retained a
12 chunk of the equity.

13 I'm sure Plaintiffs will have some comments about
14 that but, of course, their comments about Geden Holdings again.

15 Kind of baked into all of this again is the blurring
16 of those lines between Genel Denizcilik and between Geden
17 Holdings. And I think it's important, your Honor, you will
18 have noticed through our evidentiary brief in Exhibit 1, which
19 is -- one or A. It's a Declaration of Mr. Tokgoz and it just
20 plays out what a technical manager does. The irony, of course,
21 of this entire case, your Honor, is what the Plaintiffs do.
22 They're also technical managers. These are third party
23 companies that manage ships for ship owners and their real --
24 their reason for being is simply that they can take advantage
25 of experience in an economy of scale that you can run 60, 80,

1 100, 150 ships much more efficiently than you can two, three,
2 five, eight ships. Their (indiscernible) costs are a lot lower
3 and it's straightforward. Numerous companies in the industry
4 are doing this. Stealth Maritime is one, (indiscernible) is
5 one, VShips is one, Wallem is one, I mean, there's an industry
6 that does this. There's nothing nefarious about it in any way.

7 And there's no allegation, by the way, that Genel
8 performed this anything other than a (indiscernible) venture.
9 There doesn't seem to be anything on the record that points in
10 a different direction. But, again, much of the case depends on
11 blurring the lines between Genel and Geden.

12 Also, your Honor, you'll see in Exhibit 1 that the
13 registered owners, and I don't think this is in contention in
14 any way, of all of the vessels, Geden SPVs, not Genel
15 Denizcilik, Geden SPVs, again, our missing chair, our missing
16 link in the prima facie -- in the alter ego chain.

17 All right, so -- so we've seen the structure. We
18 seem to have a missing link. It's pretty clear Geden Holdings
19 is -- is an essential link.

20 By the way, your Honor, you have -- here, in the
21 Southern District of Texas they have registered with the Texas
22 Secretary of State as a foreign corporation registered to the
23 business. They have a telephone number that if you call it it
24 will be answered "Geden Holdings," and they've appointed an
25 agent in the Southern District of Texas, but I guess now is as

1 good a time as any to raise that issue.

2 The proposed Amended Complaint, which I had earlier
3 characterized as functionally seeking a relation fact to the
4 July Complaints, even though the cause of action accrued after
5 those Complaints were filed, was filed on November 20th, 2015.
6 That's very important actually because if Geden Holdings is a
7 necessary party in this case the Plaintiffs could not swear out
8 a Rule B affidavit that none of the alter egos are present in
9 the Southern District of Texas on November 20th.

10 I know there is arguments about whether their office
11 is sufficient for service of process, but we don't have to get
12 to any of that because there is no doubt that by November 3rd,
13 2015, and I believe that this is Quartaro Exhibit 4, by
14 November 3rd, 2015 Geden Holdings, not conceding that their
15 office wasn't appropriate for the receipt of service, but
16 making absolutely sure that there was no argument that they are
17 not subject to the service of process in the Southern District
18 of Texas, they go ahead and they appoint an agent here. So
19 November 20, that proposed Amended Complaint cannot be
20 accompanied by -- as long as Geden Holdings is a necessary
21 party, cannot be accompanied by an affidavit saying none of
22 these alter egos are present in the Southern District of Texas,
23 the Rule B goes away. Again, that's why we have a missing link
24 in this chain.

25 So we've got the relation fact argument. We don't

1 think that that -- that that works. We don't think it works
2 because the cause of action proves after; we don't think it
3 works because when the thing was filed they can't swear out a
4 Rule B affidavit.

5 We've got the Geden Holdings, the failure to join
6 Geden Holdings. Again, we think that that -- that's a
7 fundamental failure that eviscerates the Plaintiffs' entire
8 case. As long as Geden Holdings is not named in the caption
9 then they can't be, again, because of the Rule B arguments off
10 of the Plaintiffs' Complaint that Geden Holdings took actions
11 that, in sum and substance, are -- create an alter ego
12 argument. They're not here, so how could that occur? It
13 couldn't have.

14 And again look at Page 9 of their brief, they
15 actually allege the Advantage companies are the successors to
16 Geden Holdings. That probably tells the Court all you need to
17 know and, frankly, I think you can rule on that basis alone.

18 So -- so if we look now at Ms. Baca when we look at
19 the -- which is the Plaintiffs dep -- the Plaintiffs'
20 representative, and we look at her understanding of the
21 corporate structure of the Defendants you'll see she's got a
22 fundamental misimpression. Her testimony is that it's not Emin
23 Karamehmet that owns these companies, it's Ms. Williams, but
24 other than Ms. Baca's speculation, zero evidence on the record
25 that that's the case. And, in fact, all of the documents

1 produced by the Plaintiff show that it's Mr. Karamehmet that
2 owns the Geden Holdings groups of companies.

3 In any event, that's their allegation in the proposed
4 Amended Complaint. But it's very curious that the --

5 **THE COURT:** That he has -- that's the allegation?

6 **MR. QUARTARO:** Yes. Yes, your Honor. In fact --

7 **THE COURT:** Okay.

8 **MR. QUARTARO:** In fact, I'd be happy to direct you to
9 the paragraph if that would be helpful?

10 **(Counsel confers)**

11 **MR. QUARTARO:** That, by the way, is the other link in
12 the chain that's missing here. Plaintiffs are functionally
13 alleging that Emin Karamehmet, the father of Nazli Williams,
14 they should be treated as a single person, that notwithstanding
15 the evidence of Ms. Nazli's wealth and her ability to inject
16 money into the company and her business sophistication, and all
17 of those other facts, that the mere fact that his daughter
18 bought these ships is enough to pierce the corporate veil.
19 That's basically, at the end of the day, what they're alleging.

20 And, I mean, we have to figure out how you get past
21 Geden Holdings in that argument because that's another problem
22 with their chain. Unsurprisingly I haven't seen a single case
23 cited that says that shares owned by a daughter can be imputed
24 her father, that's probably not surprising that there's no case
25 law on that point, your Honor.

1 **(Counsel confer)**

2 **MR. QUARTARO:** Okay. So let's -- let's just spend a
3 few more minutes on the -- on the alleged corporate structure
4 because I think we really have to come back here to, I believe,
5 it's (indiscernible) 1, and that's got, how do we get to an
6 alter ego?

7 Domination and control perpetrated a disadvantage,
8 the fraud-like wrong (indiscernible) so domination and control.
9 We have a real problem here. The case Oxford Capital, I
10 believe, which is cited in our Motion to Dismiss, has the 12
11 nonexclusive factors relied on by the Fifth Circuit in trying
12 to determine what an alter ego entity is.

13 The problem we have here, your Honor, this one does
14 not fit that case. In fact, Plaintiffs haven't cited a single
15 case where there is a corporate structure like this.

16 What are we normally looking at?

17 We're normally looking at say Advantage Tankers and
18 Advantage Holdings in piercing the corporate veil because the
19 parents have dominated the subsidiary, that's a -- that's a
20 normal veil piercing argument. That's not what we have here.
21 We have a daughter who bought ships from father so that --
22 there must be something wrong with that.

23 We have both the Geden SPVs sold these ships and they
24 owed us money, so there must be something wrong with that
25 transaction.

1 We don't have our normal parent to subsidiary
2 domination and control. Accordingly, it's really -- would
3 really be hard to fit the *Oxford Capital* factors into the facts
4 of this case because we don't have that parent subsidiary, but
5 I tried, your Honor, I did try.

6 And if you look at our papers you'll see that I cite
7 for the Baca deposition only two of those factors. I asked:
8 "Do you have any evidence that Geden Holdings caused the
9 formation of the Advantage companies?" "No." "Do you have any
10 evidence that they financed them?" "No."

11 And you can see, I went through almost every
12 allegation that would be in the *Oxford Capital* list recognizing
13 it's nonexclusive, but there are 12 pretty persuasive factors
14 very, very well. What do we have?

15 The same CEO and the same CFO from a holding company
16 to the manager to Advantage. But that's not surprising, we're
17 talking about 11 sophisticated oil tankers and the two people
18 who have been running them for the last however many years.
19 Not surprising that when you looked to pick up those assets you
20 want to try and hire the people who know how to run them, I
21 mean, that's not unreasonable.

22 Okay, so we got domination and control. We really,
23 other than the common CFO and CEO we've got nothing. We don't
24 have any evidence, for example, of Mr. Karamehmet instructing
25 his daughter. We have no records of him in board meetings. We

1 have no record of his ownership of the company. There is
2 nothing there. There's just no evidence to support that
3 domination and control other, of course, than the innuendo that
4 a daughter could not possibly be separate from her father.

5 So what's the next problem?

6 Well, going -- by the way, your Honor, I would submit
7 failure to allege, let alone show prominent ownership is fatal,
8 fatal to the alter ego allegations. I submit there are very
9 few, if any, Maritime cases, let alone any other case, where
10 you have a structure similar to this, or a structure that is
11 not a parent subsidiary where we're piercing the corporate
12 veil. So, you know, we're -- legally we're way off seeing the
13 wilderness here in terms of trying to fit the equivocal case
14 law factors with the facts alleged by the Plaintiffs.

15 How am I doing on time?

16 **MR. SPEAKER:** (indiscernible)

17 **MR. QUARTARO:** Okay, thank you. And I'm trying to
18 think I have maybe 10 minutes left, but I'm paid by the words
19 so I --

20 **THE COURT:** How many minutes?

21 **MR. QUARTARO:** I said I think I have about 10, maybe
22 15. I'll reserve my time for rebuttal.

23 **THE COURT:** How much time are you reserving for
24 rebuttal?

25 **MR. QUARTARO:** Whatever's left, if that would be

1 okay, your Honor?

2 **THE COURT:** How much --

3 **MR. QUARTARO:** I'm thinking maybe 30 minutes.

4 **THE COURT:** Yeah, yeah, yeah. I think that's fine.

5 **MR. QUARTARO:** (Indiscernible)

6 **THE COURT:** I think that's about right. I clocked
7 you finishing at 20 after 3:00.

8 **MR. QUARTARO:** Yes. To be perfectly honest,
9 your Honor, I don't think there's all that much left. I think
10 I won't even use my hour and a half.

11 **THE COURT:** Okay.

12 **MR. QUARTARO:** And in full disclosure, I do have a
13 7:30 flight and a 5-year-old who's waiting for me, so --

14 **(Laughter)**

15 -- you know (indiscernible)

16 **THE COURT:** You mean you have another place you'd
17 rather be. Okay.

18 **MR. QUARTARO:** Well, I don't know that I would go
19 that far, your Honor.

20 **THE COURT:** That's quite all right.

21 **MR. QUARTARO:** But -- because this is an interesting
22 case and --

23 **THE COURT:** Yes.

24 **MR. QUARTARO:** -- and again, I've been across from my
25 opponents for a while and suffice it to say that we never agree

1 on the same facts and they have a kind of interesting, whatever
2 the merits of it, it's an interesting point. And shall we say
3 you have, as I do in this case, we have opponents who respect
4 you, who know the industry, who know there's a certain
5 collegiality among maritime professionals and I think that
6 extends to the Maritime Bar in New York. It certainly does in
7 Texas. To shorten, it's not an onerous case to deal with. We
8 know each other and we've been able to get things done.

9 But I don't think that changes the facts and the law
10 and I think it is overwhelmingly in favor of my client,
11 your Honor.

12 The second piece that we need to show here, we've got
13 domination and control, and again we submit that we're just not
14 there.

15 Oh, I'm sorry, your Honor, I just refer you to
16 Paragraph 25 in the Plaintiffs' Complaint.

17 Thank you, Mr. Matthews. Appreciate that.

18 And I believe that has got the -- (indiscernible) at
19 the top of Page 7, controlled by -- the vessels are controlled
20 -- first the Geden fleet, they're talking about Genel
21 Denizcilik, not Geden Holdings, as the (indiscernible), in
22 terms controlled by the Cukurova Group, ultimately and
23 beneficially owned by members of the Karamehmet family.

24 In the testimony the only person in the Karamehmet
25 family that's identified as owning Geden Holdings, Emin

1 Karamehmet. Again, zero evidence other than Ms. Bacha's
2 (phonetic) speculation, which fascinatingly (indiscernible)
3 Verified Complaint that Ms. Nazli Williams owns it.

4 There's also a reference on Paragraph 30, I believe,
5 your Honor.

6 **THE COURT:** Paragraph 25 and Paragraph 30.

7 **MR. QUARTARO:** Yes.

8 **THE COURT:** Okay.

9 **MR. QUARTARO:** These lay out their theory of the
10 ownership of things. And, you know, put it on a graph or
11 charts, you can see the missing link. It's very, very clear.
12 Again, Plaintiffs' own papers say that.

13 So we've got the domination and control. What's the
14 other thing? And I think this is the part, by the way, that's
15 just fatal. We've got a lot of problems already, but I think
16 this one is just the end. We've produced the wire transfer
17 records. We've shown that Geden Holdings has paid for the
18 ships. We've shown that Geden Holdings (indiscernible). Geden
19 Holdings comes out to about 200 odd million dollars in equity
20 when it sells these ships.

21 Now, first of all, as a matter of pleading,
22 Plaintiffs don't allege a security interest in the vessels.
23 They don't hold a lien, they're not mortgagees, they don't have
24 any of that. Right? Which is neither Rule B nor Rule C, of
25 course, your Honor. If they had a maritime lien, they would

1 try to arrest the ships under Rule C, not attach them under
2 Rule B. So there's no doubt they don't have a security
3 interest and Ms. Bacha admitted that during her testimony.

4 Geden Holdings never represented that it wouldn't
5 sell any of its vessels. (Indiscernible) think about the Rule
6 that they're actually asking for. They're saying, oh, if a
7 company has an open contract with another company, they're
8 counterpart can never sell an asset while that contract is
9 open; because if I have damages under my contract, that must
10 have been a fraudulent transfer to my disadvantage. It doesn't
11 make sense. The theory doesn't make sense. It just
12 intuitively doesn't work.

13 But even if somehow it did, they don't actually
14 allege that the sale of those vessels were on anything other
15 than an arm's length basis. Tellingly, I asked Ms. Bacha that,
16 I said Ms. Bacha, if Geden Holdings, again a non-party, which
17 it's not even clear why we're addressing in the deposition, but
18 we have to get to the owner, I said:

19 "QUESTION: Ms. Bacha, if Geden Holdings received the
20 full value of those ships, it received its equity
21 interest, how could the Plaintiffs have been
22 disadvantaged by that sale?

23 "ANSWER: They couldn't."

24 They couldn't. And that's critical. The Plaintiffs
25 know if Geden Holdings got all of the money from those ships,

1 they couldn't be disadvantaged by the sale of them.

2 They have no evidence that Geden Holdings wasn't
3 paid. Quite the contrary. Your Honor's got dozens and dozens
4 of pages of wire transfer records in the record. They've got
5 no challenge to the arm's length market sale price of the
6 vessels. None at all. And we have no doubt that new money was
7 injected into Forward Holdings that then trickled down into the
8 various SPVs to buy the ships. Again, those records are all
9 with your Honor, Quartaro Exhibits 1, 3, and the Karamehmet --
10 or, I'm sorry, the Ms. Williams exhibit that I handed up to
11 your Honor a few moments ago.

12 So they have no evidence that these vessels were sold
13 for anything other than market terms. They have no evidence
14 that the prices don't reflect market terms. They've admitted
15 that that's fatal to their case.

16 Two other factors I think really point to the arm's
17 length nature of the transactions. Firstly, five major
18 international shipping banks financing the acquisition by
19 Advantage. And this isn't, you know, the ABC Bank of
20 Kazakhstan, this is CIT Finance, EVB (phonetic), Nord LP
21 (phonetic), Unicorn (phonetic), there are huge, huge
22 multibillion dollar international shipping banks who extended
23 new credit, new money to help finance the acquisition of these
24 ships. Again, there is simply no argument to that. This isn't
25 a rollover of the Geden loan, you've got new lenders. Again,

1 Geden tried to restructure with its lenders, couldn't do it.
2 So new loan facility.

3 The cover page of that and the list of lenders is
4 also in the Quartaro Dec. I believe it's Exhibit 3. Yes. Oh,
5 I'm sorry, Exhibit 2. Series of pages showing the new lenders
6 and the new loan agreement in favor of Advantage.

7 And if I didn't verge on it to your Honor earlier,
8 Exhibit 4 is the Texas Secretary of State records showing that
9 Geden Holdings had an agent in the SD of Texas by November 3rd,
10 2015.

11 So they get paid full price, there is new money,
12 there is, I don't want to call it a third party vetting, but
13 there are some pretty major serious shipping banks that see
14 this as an arm's length transaction and finance it. On top of
15 that, and this is the part that just torpedoed the case
16 altogether, obviously my opponents asked the CFO to see if he
17 had the \$200 million in Geden Holdings, what did you do with
18 it? Now, we don't know (indiscernible) wire it over to
19 Ms. Williams to buy the tankers or we kicked it all up to Emin
20 Karam Mehmet. That's not what they did. They testified they
21 used it for ordinary business purposes. When pressed, one of
22 those ordinary business purposes, your Honor, to pay the
23 Plaintiffs. If your Honor refers to the final exhibit in the
24 Quartaro Declaration, and again I apologize that it's a series
25 of wire transfers, but you can see, for example, the very last

1 page of the Quartaro Declaration, which is the very last page
2 of the response to the subpoena served on Geden Holdings -- by
3 the way, where do you think they served that subpoena? Right
4 here in the Southern District of Texas on Geden Holdings'
5 registered agent, by the way. No doubt there could be service
6 of process in the Southern District of Texas, Plaintiffs did
7 it. So there's no question this is subject to jurisdiction
8 here, at least for Rule B purposes.

9 If you look at the very last wire transfer, there's a
10 whole bunch of them, but the last one's a beauty and that's why
11 I look at the last one. What is Geden doing? Well, let's take
12 a look. It looks to me like they're wiring a rather
13 significant sum of money, this appears to be \$426,888, to who?
14 Tank Punk Inc., your Honor. So not only is Geden Holdings paid
15 the full market value of its ships, not only does it receive
16 its equity and then use it for general business purposes, one
17 of those general business purposes is paying the Plaintiffs.
18 So how on earth could they be disadvantaged by the sale of
19 these vessels by Geden Holdings (indiscernible)? The short
20 answer, your Honor, and the long answer is they weren't.

21 A couple of quick final observations, your Honor,
22 before I cede the floor. First, we owe the Court an apology.
23 We owe the Court an apology, I owe the Court an apology. I
24 filed my papers late yesterday. The reason I filed them late,
25 quite frankly, I wrote noon Tuesday in my calendar, instead of

1 noon Monday. That's, unfortunately, what happened. I tried to
2 rectify it as quickly as I could. Unfortunately, both for my
3 stomach and for my back, I was flying out of Newark yesterday,
4 I wound up traveling, instead of four hours, I spent nine
5 hours, because a weather system moved through the East Coast
6 and so I was delayed. As soon as I got to Houston we rectified
7 that, we got the papers filed right away. As soon as we
8 realized, it was actually during a conversation with
9 Mr. Gaitas, that the papers were due noon yesterday, I, you
10 know, immediately thought, geez, I didn't realize, I'm sorry,
11 we'll have it in as soon as we can, but I'm leaving for the
12 airport in 20 minutes, so, you know, as soon as I get down to
13 Houston we'll get them filed. Which is what we did.

14 Nothing intentional about that, your Honor, and I
15 truly hope that that won't be read as any sort of error or
16 omission on behalf of my client. The error was mine. I wrote
17 Tuesday instead of Monday, we only had a week to prepare the
18 brief, and so that's what happened. I apologize to the Court
19 for that tardy submission.

20 The other thing is that our opponents have asked for
21 a adverse inference of some kind because term sheets from NSF
22 and from Centerbridge (phonetic) were not produced. First,
23 it's not clear what adverse inference could possibly be taken
24 in respect to the transaction if all parties know it didn't
25 actually occur. But second, during the deposition, when that

1 item came up and that issue came up, the testimony is quite
2 clear I said send me a written request. Send me an email or
3 something. It doesn't have to be formal with these guys. They
4 don't have to send me a formal request for documents, just send
5 an email telling me what they want. No such email, your Honor.

6 That said, we have to go back and say that, no,
7 there's nothing to hide there. It's a transaction that was
8 never consummated. It never happened. So, you know, if there
9 is a great demand for it, if there is some theory that the
10 Plaintiffs can articulate that it's somehow relevant to their
11 case, we're certainly happy to oblige, your Honor. As you've
12 seen, we've produced over 5,000 pages of documents, we've
13 produced three witnesses, we traveled to England, we've
14 cooperated in every way, shape, and form for this veil piercing
15 argument, which, frankly, has very little merit, your Honor,
16 really.

17 I thank the Court for your time. I would reserve the
18 remainder of my time and hope that I do not have to use
19 anywhere near the majority of it for rebuttal. And to the
20 extent your Honor has any questions, I am certainly happy to
21 answer them. Or to answer them at the conclusion of the
22 hearing, if your Honor believes that would be more appropriate.

23 Thank you.

24 **THE COURT:** Are you opposing the Document 32, Motion
25 to File Supplemental Complaint by Tank Punk, Inc.?

1 **MR. QUARTARO:** Yes, ma'am.

2 **THE COURT:** You are. Okay.

3 How about a response?

4 **MR. QUARTARO:** Thank you.

5 **THE COURT:** Thank you.

6 **MR. GAITAS:** Your Honor, is it okay if I can sit down
7 while I speak?

8 **THE COURT:** Yes, you may. Whatever you're most
9 comfortable doing.

10 **MR. GAITAS:** I very much appreciate it. Thank you.

11 **THE COURT:** It's absolutely fine. What we really
12 care about is having a good record, so --

13 **MR. GAITAS:** Then am I -- can you hear me?

14 **THE COURT:** Can we hear you? Yes.

15 **MR. GAITAS:** Okay. I will briefly respond to my
16 learned friend on the arguments he made before I go on my
17 argument.

18 I thought I didn't hear him correctly, but I think I
19 did. I thought Mr. Quartaro admitted that Geden Holdings is
20 now essentially a nonfunctioning company and it basically has
21 one ship and it is not engaged in business.

22 **THE COURT:** A shipwrecked ship, right?

23 **MR. QUARTARO:** Not -- yes, Geden Holdings, my
24 understanding, I may -- again, they're neither a party nor
25 represented here. But my understanding is they do own one

1 carrier, but -- one bulk carrier, but she's wrecked on the
2 coast of Tunisia. However, what I actually said, and it may be
3 helpful, although onerous, and I apologize to go back
4 (indiscernible) what I said, and what I said was they remain in
5 business and they do have ships chartered in and chartered out
6 at an advantageous rate. So in fact, they do remain in
7 business, your Honor.

8 **THE COURT:** They just own one ship.

9 **MR. QUARTARO:** I'm sorry, your Honor?

10 **THE COURT:** They just own one ship, but they charter
11 others --

12 **MR. QUARTARO:** I mean I suppose you could call it a
13 ship, but it's not earning revenue, as far as I'm aware. But
14 there may be an insurance claim or other things that are tied
15 up in that. It wasn't an issue that any of us really explored
16 or got into. And it wouldn't have been an issue that would be
17 appropriate for any of us to get into, because they're not
18 represented and they're not a party.

19 But again I think, your Honor, that underlines the
20 central role of Geden Holdings and the fact that they're
21 missing from this action for a reason.

22 **THE COURT:** Does that clear it up for you?

23 **MR. GAITAS:** It is clear enough for me and it raises
24 even more questions, because two of these ships, your Honor,
25 are in charter, two of (indiscernible) ships are in charter.

1 Actually one of the clients in this case are in charter with --
2 one of them is the -- as I see here, the one to Psara Energy.
3 It is in charter with one of the daughter companies of Geden
4 Holdings. And she's under arrest in Venezuela for more than
5 one year and there are great concerns on the part of the owner,
6 my client, Psara Energy, what's going to happen with that ship
7 with a company that has no visible assets, it has perhaps some
8 money that it realized from the sale of the liquidation of all
9 its assets, that's something to be worried about, as to whether
10 they're still in business.

11 But Geden Holdings has been in business all along as
12 a holding company and a red herring. It owns no tangible
13 assets. It has no personnel. That's what the witnesses who
14 were examined in deposition testified, the CEO and the CFO and
15 directors. They have nothing visible, except a portfolio of
16 shares which they liquidated. And right now they have no
17 substance. And that's reason enough to pierce the corporate
18 veil and ask for this remedy in these circumstances.

19 And my friend argued that this veil piercing remedy
20 under our law applies only in situations or suggested that it
21 applies only in situations in which there is a
22 parent/subsidiary relationship. And that is not the case at
23 all. It applies when corporate business between separate
24 corporations is confused.

25 And, indeed, in the case of predecessor and successor

1 companies, as we have here with Geden Holdings being a
2 predecessor and Advantage Tankers being a successor, we have a
3 Fifth Circuit Court of Appeals case by the name of Patin v.
4 Thoroughbred Power Boats, Inc., and it's to be found at
5 394 F.3d 640. And this is the kind of situation we have here.
6 We have a predecessor -- and this is what is also the situation
7 that was the case in the Patin case. You have a company that
8 transferred all of its assets to another company to avoid
9 liability.

10 Now, they said that -- they argued, my friend argued
11 that Geden Holdings has not been joined as a party. And this
12 is correct. It has not been joined as a party. But this is
13 not essential to reaching those who are behind the current
14 Advantage Tankers group. And the people who are behind the
15 Geden -- behind the Advantage Tankers group are and have been
16 some people, as you will read in our briefing and you will see
17 in the evidence of production of documents and depositions,
18 were in the world that is before this group got in financial
19 trouble, they were referred to as the Karamehmet family. And
20 it is only recently on the depositions of Mr. Tugrul Tokgoz
21 (phonetic) and Mr. Mehmet Mat (phonetic) that now Mehmet family
22 just means Mehmet Emin Karamehmet, who is the tycoon, really,
23 behind all of these businesses.

24 Now, my learned friend omitted to mention, but you
25 will find it in my briefing, Mr. Mehmet Emin Karamehmet has two

1 problems. The first problem is that he's a convicted felon who
2 was charged, tried twice, he appealed, he was tried again, he
3 was sentenced last Christmas, December 25, for embezzling from
4 one of his banks that he owned something in excess of \$400
5 million. And also you will see amongst the exhibits that we
6 have filed in this case in support of our argument that
7 Mr. Mehmet Emin Karamehmet defaulted on a personal guarantee to
8 Commerce Bank for one of the ships that was part of his group.
9 It was the motor tanker, Blue, and there was -- there is a
10 judgment, an equitable judgment of the High Court in England
11 holds him liable for this. He defaulted. He was found guilty
12 of not honoring his personal guarantee.

13 Now, with this background and in these circumstances,
14 it is small wonder that Mr. Mehmet Emin Karamehmet had to be
15 taken out of all of this equation, because which banker is
16 going to accept as a guarantor a person who has a felony
17 conviction and a person who has been found liable on failing to
18 honor one of the guarantees to one of the financing banks.

19 So who is the closest? Now, we questioned in the
20 deposition the daughter of Mr. Mehmet Emin Karamehmet, who
21 (indiscernible) Williams, because Karamehmet -- her last name
22 is Karamehmet Williams, (indiscernible) Karamehmet anymore.
23 Now, we questioned her. She's the only child, she said, as far
24 as she knows, of Mr. Mehmet Emin Karamehmet. It's a very, very
25 close family. (Indiscernible), of course. But this is the

1 Karamehmet family. These are the people who, you will see in
2 documents, in the prospectus that my learned friend mentioned,
3 in the structuring plan that AlixPartners (phonetic) made for
4 them, and in a report that was filed with the British authority
5 of overseas corporations called Corporate House, in which
6 Mr. Tokgoz, the director, signed off, and they all stated that
7 the shareholder, the ultimate shareholder of everything is the
8 Karamehmet family. But when things were bad and it became
9 public Mr. Emin Karamehmet was in trouble, they couldn't keep
10 him there anymore, because it would be simply unacceptable to
11 bring him back and he cannot sit on the board of directors
12 because of this. He would get disqualification. Now, the
13 daughter is accordingly in these circumstances a straw man.

14 My friend talked about the -- it is natural for
15 Mr. Tokgoz and Mr. Mat to do all of the work for the successor
16 company because, after all, it is the same business, they are
17 in it, they're executives. They did all this, your Honor,
18 while they still wore the Geden Holdings Limited hat. They
19 were employees and officers and directors of Geden Holdings.
20 They procured the (indiscernible). They made Advantage
21 Tankers. They reserved the name, they went to the authority
22 that does the incorporation in the Marshall Islands. So they
23 were not strangers. And they also negotiated the terms of the
24 financing with all the banks. And this will be shown because
25 what I'm telling you is, I'm trying to respond to my friend,

1 and it is -- the evidence is written and it is the evidence of
2 the depositions and the documents that were produced in
3 discovery.

4 Now, Mr. Quartaro referred to an Exhibit 1 of his
5 Declaration and he referred to wire transfers between the
6 sellers and the buyers of the ships. And I will have to make a
7 correction here. These are not wire transfers. The records
8 that I have seen that Mr. Quartaro has produced are records of
9 transfers -- they're photocopies, first of all. They're
10 records of transfers internally, internally, in one bank which
11 happens to be, in Turkish they call it Kredi Bankasi
12 (phonetic). I suppose Credit Bank would be a good name for it
13 in English. And they are the bankers of Geden Holdings
14 Limited, the bankers of Ms. Karamahmet Williams, the bankers of
15 the sellers and the bankers of the buyers. And these are just
16 purporting to be records of internal transfers. There are no
17 wires here. They're just debiting one account, crediting the
18 other account. You don't have the picture until you have seen
19 the full record of the transfer where the money came from and
20 to whom it was sent and what happened to it afterwards.

21 I would argue that in the case involving such very,
22 very large amounts of U.S. dollars, and we are talking
23 approximately \$800 million, these transactions, your Honor,
24 would have to be done involving the Federal Reserve Bank here
25 or a clearing house in New York. There just -- there isn't

1 just all that kind of money laying out in Turkey, dollars, to
2 do these transactions. And we've asked for records and we
3 haven't seen these records. We have asked for credible records
4 and we haven't.

5 Now, Mr. Quartaro referred to blurring of lines. And
6 the blurring of lines, as your Honor will see when you read the
7 excerpts from -- you read the excerpts from the documents that
8 were part of the depositions and you read the testimony of
9 these witnesses from the depositions, the blurring of the lines
10 between Geden Holdings and Geden Lines was quite intentional.
11 And I will tell your Honor why I feel it is intentional, why I
12 understand it is intentional.

13 Geden Lines, which is the nickname of Genel
14 Denizcilik Naklitayi, and I'll have to spell that for the court
15 reporter, is a Turkish company established in Turkey with
16 business premises, with offices, with personnel, with a
17 payroll, that pays taxes, it's a lawfully constituted company.
18 Geden Holdings Limited is an offshore Maltese company that has
19 none of these. It does not have personnel, it does not have
20 assets, it does not have anything. It is not -- in dealing
21 with authorities, in dealing with major oil companies, it has
22 no face to show, because it doesn't even have employees. It
23 does operate ships.

24 So when they were dealing with some people, with
25 Defendants and their predecessors in interest, they told people

1 that they were Geden Lines, or Genel Denizcilik. You will see
2 one of our first exhibits in which Cukurova, the holding
3 company of Geden Holdings, makes a statement about its
4 business, what it is, it clearly states that we own and operate
5 33 ships. Mr. Tokgoz is a director of this company. He's a
6 director of the other company. They make a distinction, these
7 people. One they call the operating company, the other they
8 call the holding company.

9 But Geden Holdings Limited was not and is nothing
10 more than a holding company. It's a portfolio that sticks in a
11 drawer or file cabinet and maybe a seal. That's what it is.
12 And some shares, perhaps. It is not a real interest, not a
13 real business.

14 Now, I'm going on my own case and the presentation of
15 my case. I want to thank the Court for giving us this
16 opportunity to do it. And I'm grateful to my friend on
17 agreeing on the parameters we don't have to bring live
18 witnesses, although it would be more interesting, I think, with
19 live witnesses, and we may still get that opportunity. But I
20 will not bore the Court with telling you who the witnesses are,
21 because you have the depositions already and you know that we
22 examined the chief financial officer, the man who is director
23 and chief executive officer of Advantage Tankers, who also wore
24 the same hats, respectively, for Geden Holdings, Geden Lines,
25 and all the individual one-ship companies which were involved

1 in this thing. Nothing gets done unless these two people do
2 it.

3 Now, very simply -- and I'm doing it, I have a
4 compass as to where I'm going. The requirements of Rule B(1)
5 are very, very simple.

6 You have to have a claim as a maritime claim against
7 the defendant. We have that. I don't think anyone will
8 dispute that. I thought I heard my friend say that they
9 dispute that, but I think I misheard it.

10 The defendant cannot be found in this District. And
11 this is going to be a bone of contention and perhaps I should
12 respond to this now.

13 They argue that Geden Holdings Limited was registered
14 in the State and they argue that it had an agent for service of
15 process and we will have to disagree with that, as we have,
16 with the presence of the agent for service of process, because
17 when the original Complaints were served, there was no agent
18 for service of process in the Southern District of Texas. They
19 had an agent for service of process in Dallas. So it was
20 proper in every respect in this regard.

21 Now, they have some difficulty with the service of
22 process being effective for the amendment of the Complaint.
23 And I would very, very simply point out to them that there is a
24 Fifth Circuit case right on point of this and it is called
25 Highmark v. Angelina Ravanotti Dia Memento (phonetic), and this

1 one, I'll give you the cite for it -- if I might have a moment.
2 There it is. It is 132 F.3d 264, and specifically look at Page
3 267. It is a 1998 Fifth Circuit case that addresses this
4 point. The point is that for Rule B practice the presence in
5 the District of the agent for service of process and the non-
6 presence of the defendant count as of the date of the filing of
7 the complaint. That's what matters. Nothing else matters.

8 Now, they -- also my friend tried to make an issue,
9 and I'll address it very briefly, about Plaintiff Tank Punk,
10 Inc. trying to file a complaint that relates back to that time,
11 because in the meantime they did appoint somebody in the
12 District for service of process, last November I think. And
13 that is Rule 15(c) of the Federal Rules of Civil Procedure and
14 it states that an amendment to a pleading relates back to the
15 date of the original pleading when:

16 The law that provides the applicable statute of
17 limitations allows relation back. And we don't have a rule in
18 admiralty and we have no problem with statute of limitations
19 (indiscernible) not prejudiced by a few months delay.

20 The amendment asserts a claim or defense that arose
21 out of the conduct, transaction, or occurrence set out, or
22 attempted to be set out, in the original pleadings. And,
23 your Honor, the transaction or occurrence that we are concerned
24 with in this case is a multiplicity of claims that arise under
25 a charter party involved in arbitration or provides for

1 arbitration. It is filed -- it relates to a case that is
2 already in arbitration. The same case. Nothing has changed,
3 except the ship in the meantime was redelivered and the parties
4 finalized the accounts and the owner of the ship claims that,
5 hey, you didn't fix the ship, you delivered a wreck to me, so
6 you owe me money. So it is the same complaint (indiscernible)
7 a claim in arbitration in England.

8 And I would also point out as to the relation back in
9 circumstances like this, the Court may want to have a quick
10 look, there are other cases that would sustain our argument,
11 but this is one that is called Dann, D-a-n-n, Ocean Towing
12 Inc., and you will find this at 2008 U.S. District Court,
13 Lexis 104779, and it is at Star 9 through 12.

14 Now, with this out of the way, going on the
15 requirements of Rule B for attachment that not being found in
16 the District, the big bone of contention is whether the
17 Defendant has property in the District. We say that the
18 Advantage Arrow, when she was attached, was property of the
19 Defendants. And the reason why we say that is because the
20 corporation that owns this ship is a successor of the same
21 interests that owned her when she was named the Target.

22 Now, very briefly in responding to the Defendants
23 argument that this was a sale. When the ship was sold by her
24 previous owners to her new owners, this was a bona fide arm's
25 length transaction. And I will respectfully ask the Court to

1 look at -- I don't know if your Honor has it. Do you have the
2 binder?

3 **THE COURT:** I have it not in court with me here, it's
4 in my office.

5 **MR. GAITAS:** It is Exhibit 4. It's an item that was
6 called Exhibit 4.

7 **THE COURT:** Okay.

8 **MR. GAITAS:** And --

9 **MR. QUARTARO:** I'm sorry, do you have a spare copy?

10 **THE COURT:** Exhibit 4 to what? It's in one of the
11 binders. Which binder?

12 **MR. GAITAS:** It's the ones that contain all the
13 exhibits following my Declaration, George Gaitas' Declaration.

14 **THE COURT:** Okay. Does that clear it up?

15 **MR. QUARTARO:** Thank you, your Honor. Yes.

16 **MR. GAITAS:** And there is a document in there --

17 **THE COURT:** Exhibit 4.

18 **MR. GAITAS:** Exhibit 4. And it is a letter, which
19 ultimately has been signed by the respective parties, from
20 Geden Holdings Limited, the shareholder, in quotes "the
21 shareholder," to Shell Western Supply and Trading Limited, the
22 charter. Now -- and it's at Bates Number 01248. In the second
23 paragraph of this letter Geden Holdings Limited represents the
24 following:

25 "As part of certain reorganization efforts being

1 conducted by the existing shareholders of each
2 existing owner it has been proposed that each
3 existing owner will sell the vessels, all its title,
4 interest to, and rights in each vessel to the
5 relevant companies listed in Annex 1 hereto as new
6 owners."

7 And if the Court will look then at Annex 1, it is a
8 list of vessels with the existing owner, the new owner, the
9 existing mortgagee, and the new mortgagee.

10 And continuing on Paragraph 2, in parentheses, "(and
11 each wholly owned by the shareholder.)"

12 So, the new companies that are buying the ships,
13 notwithstanding what we are being told, notwithstanding what
14 you were told just a few moments ago, according to this letter,
15 which is a serious commitment between Geden Holdings and Shell
16 Oil Company, Shell Western, Geden Holdings remains the owner
17 and this is not a sale. It is not an arm's length transaction,
18 your Honor. It is a reorganization and it is a reorganization
19 because these companies, and Mr. Quartaro admitted, cannot get
20 credit anymore. They cannot get refinancing because, what, we
21 said to you what, why they cannot get credit. Because they're
22 identified with Karamehmet. And Geden Holdings Limited has a
23 huge debt burden, including an onerous burden to my client.
24 They don't want to perform it. They don't want to be liable.
25 So what's an easy way? The rearrange the ownership, the ships

1 are immunized, and as you will see in the depositions of the
2 witnesses, the assets are (indiscernible). So they
3 (indiscernible) to avoid arrests. That's the whole purpose of
4 this thing. And also to provide financing, so they can
5 survive, of course.

6 But these were conditions that were dictated by the
7 banks and the reason that these very honorable banks wanted
8 this arranged is because Geden, the Geden group and
9 Mr. Karam Mehmet had them in a fix whereby they were owed half a
10 billion dollars and if Geden Holdings Limited went under, I
11 don't know what the bankers who approved the loans would tell
12 their directors or the bank examiners really. That we loaned
13 money to a guy who turned out to be a felon?

14 So no -- this document conclusively shows there was
15 no arm's length transaction. And there's something else about
16 this document. If you will look, your Honor, at Page -- still
17 the first page, 1248, under Roman Numerals II and III,
18 respectively, Geden Holdings Limited purports to charter a
19 whole lot of ships. I think there are one, two, three, four,
20 five, six, seven, eight, nine, nine tankers that belonged to
21 itself but are going to be sold and it is making charter
22 parties, five-year term charter parties, on behalf of the
23 successor company that has just been created. It was created
24 December 8th. It was like two months before. This is dated,
25 incidentally, February 6th, 2015. And not only that, but under

1 Roman Numeral III you will see that Geden Holdings is also
2 setting the rate of the charter. And it is somebody else's
3 business. It is like I'm buying a house and the seller makes a
4 deal whereby he puts a tenant in the house that I'm buying and
5 I have no idea about it. Or maybe I had a good idea what was
6 going on. But that's the sense it makes. They charter the
7 ships in advance to somebody else because it was a
8 reorganization. These were the terms that the banks liked.

9 Now, moving forward from this and to another item
10 among the exhibits, and that has to do with the arm lengths --
11 arm's length transaction, Exhibit 20. This is a -- it is
12 called a fee letter, your Honor, and it is addressed to
13 Advantage Tankers, LLC. Now, there are some interesting things
14 about this letter. Advantage Tankers, LLC was created in
15 December of 2014. This letter is dated November 18th, 2014.
16 It didn't exist really. So the letter is addressed by CIT
17 Bank, they're office in New York, in care of Geden Holdings
18 Limited at 85 St. Johns Street, Valletta, Republic of Malta.
19 Incidentally, this is a lawyer's office in Malta. It's not the
20 business address of Geden Holdings. And this letter is an
21 undertaking to pay the bank's commitment fees. They are
22 substantial. Just quickly looking through this, it says, "an
23 instrumentation fee in an amount equal to \$250,000 due and
24 payable no later than ten business days after the execution of
25 this commitment by you." So an upfront fee corresponding to 85

1 percent. Some big amounts of money that were being promised or
2 the bank requires to be paid by someone.

3 If you go to the last page of this letter, which is
4 at Bates Number CIT92 -- incidentally, we got this document not
5 from our opponents, we got this with subpoena. It was not
6 voluntarily produced. We got it through the bank, because here
7 you can serve them here. If you look at the acceptance, it
8 says executed as a deed by Geden Holdings Limited, acting by
9 Mehmet Mat under authority of Geden Holdings Limited, in
10 accordance with the laws of its place of incorporation, by
11 Mehmet Mat.

12 So Geden Holdings Limited is making deals and is
13 paying the financing fee for the financing of Advantage
14 Tankers. Where does my friend see this as a arm length --
15 arm's length transaction? It is (indiscernible) financing. It
16 is done by Geden Holdings. They create this creature of theirs
17 that as of this letter doesn't even exist. They make it a
18 month later.

19 And along the same lines, your Honor, I don't have
20 this in the binders that I brought before the Court, but I have
21 a copy. It will be -- if I could hand this to the Court.

22 **(Document tendered to Court)**

23 I have a copy of the bank's commitment letter. This
24 was, incidentally, also brought up in the depositions, but then
25 in preparing the briefs, the briefing, we omitted it. We

1 didn't refer to it.

2 **THE COURT:** Okay.

3 **MR. GAITAS:** And if you would again, your Honor, look
4 at the third page of this document, it's the same -- the same
5 financing company, CIT Finance, and it is again addressed to
6 Advantage Tankers in care of Geden Holdings Limited, and bear
7 in mind that Advantage Tankers doesn't even exist at the time.
8 And if your Honor will go to page seven of this document -- do
9 you have it before your Honor?

10 **THE COURT:** Yes.

11 **MR. GAITAS:** You will see that it is again accepted
12 and agreed to in all respects by the undersigned on 19 November
13 2014. Geden Holdings Limited by Mehmet Mat, CFO. And this,
14 your Honor, is a commitment letter. It is the terms and
15 conditions under which the bank will lend the money to
16 Advantage Tankers. And these people were in the middle of all
17 of these things, they arranged it, they procured it, and they
18 signed it and committed Geden to all of this. And Advantage
19 Tankers was not yet born. It's like me making commitments on
20 behalf of my grandchildren that have not been born yet.

21 So, there is yet another document that has bearing on
22 this issue of a arm's length transaction, and this is at
23 page -- it is -- it is Exhibit 19; I am sorry. Exhibit 19 of
24 the exhibit bundle. And we needn't go into it in great detail,
25 your Honor. You will -- I'm sure you will look at it in

1 detail, but I want to underline this, underscore this. This is
2 correspondence between the chief financial officer of Geden
3 Holdings, and it is with a bank called Norddeutsche Landesbank
4 Girozentrale, and for -- and, briefly, it's NORD slash LB --
5 and concerns terms for loans to be extended to Advantage --
6 Advantage Tankers. And when this correspondence was exchanged,
7 your Honor, Advantage Tankers didn't exist. This is October,
8 2014. And the name of Ms. Karamehmet in there is mentioned as
9 owner. And when we -- we examined Mr. Mat, who authored this
10 thing, the CFO, we asked him if he had ever met Ms. Karamehmet
11 before that. He said, no, he didn't even know her. And he was
12 making commitments and representations of a company yet to be?
13 And while he was doing that, your Honor, he couldn't avoid it,
14 he was wearing his Geden Holdings Limited hat because that was
15 the office he had. He was the CFO of that company. He was
16 also director at the time, and he was also the chief financial
17 officer of Geden Lines, Genel Denizcilik Nakliyatı. So, these
18 are not arm's length transactions.

19 Now, my friend tried to blur things a little bit
20 about whose veil is being pierced. And as things are turning
21 out, your Honor, it is very simple. It is Advantage Tankers.
22 That's whose veil is being pierced. And who is behind the
23 veil? Well, it's the Karamehmet family. And it's Ms. Gulsun
24 Nazli Karamehmet, who is the owner of 85 percent of the shares.
25 That's who is ultimately behind it.

1 Now, there is a red herring that my friend has tried
2 to -- tried to impose as his instructing clients
3 (indiscernible), and that is called Geden Holdings Limited.
4 That's a red herring, your Honor. That's why it is not named a
5 defendant. That's why; because Geden Holdings is nothing. We
6 cannot attach anything that Geden Holdings has, and it is a
7 company that is inside a file drawer. And that's it. But,
8 interestingly, it was the guarantor of the performance in all
9 of these charter parties my clients have.

10 Now, focusing on the first part of the two-part test
11 that my friend referred to for corporate veil piercing, the
12 first part is that the corporate form is abused to commit
13 fraud -- fraud or injustice. And we noted earlier that -- the
14 relationship of predecessor and successor, and we referred to
15 the case of *Patin v Thoroughbred Power Boats, Inc.* And that's
16 the relationship here. It is a transfer of -- a massive
17 transfer of assets from one company to another to avoid
18 liability. It's not a parent subsidiary, because most -- most
19 veil piercing decisions are in that context. But that's not
20 exclusive. So, in this case we contend and we have argued and
21 we have offered evidence to the effect that there has been a
22 massive transfer of asset from the Karamehmet group to
23 Advantage Tankers.

24 And then there is domination and control. And this,
25 again, under -- under several cases; the one that we referred

1 to in our briefing -- we referred to three of them -- but this
2 *Bridas*, or *Bridas v. Government of Turkmenistan*, and that's at
3 447 Federal 3rd 411, and we've taken from there some -- some of
4 the circumstances that show this domination and control.

5 The first one we have is the confusion that we -- we
6 note, is the confusion of corporate identities. And we have
7 offered documentary evidence that your Honor will see. That
8 documentary evidence consists of this representation that, "We
9 are the owners of 33 tankers." And then when we take the
10 depositions, "No, no, it wasn't us; it's a mistake." We've --
11 they make a representation in the report of AlixPartners, whom
12 they gave the (indiscernible), "Geden Holdings manages a
13 portfolio which consists of 33 ships," et cetera, et cetera.
14 When we examined the witnesses, "Oh, no, no; that's a mistake."
15 There's so many -- so many of their previous statements that
16 they have now changed their tune, and they identify them as
17 mistakes. That's what's blurring the line. It is not -- it's
18 not the plaintiff. It is the Karamehmet group, Geden Holdings,
19 Geden Lines, and the rest of them.

20 Now, we go to the -- to the ordinary, very simple
21 veil piercing laundry list that the courts use to see if there
22 is domination and control. Common officers and directors. We
23 don't need to belabor this point. Mr. Tugrul Tokgoz,
24 Mr. Mehmet Mat; they are in Geden Holdings, Geden Lines, every
25 single one-ship company that owned their -- the fleet of these

1 11 tankers we referred to. They are likewise officers --
2 they're officers and directors in Advantage Tankers and in
3 every one-ship company that owns Advantage Tanker ships,
4 including the Advantage Arrow that is the issue in this case.
5 So, absolute -- absolute identity of these two people in
6 everything, in all of the assets.

7 The predecessor and the successor. Common stock
8 ownership. We -- my friend said that it is not the same, that
9 Mr. Karamehmet and his daughter are the same thing. But the
10 Karamehmet family includes them. So, the stock was owned by
11 Karamehmet family, according to their earlier representations,
12 and it is still owned in the loose scheme by the Karamehmet
13 family.

14 Common business departments, another feature that
15 courts take into account in piercing corporate veils. Geden
16 Holdings Limited, Advantage Tankers Limited, the whole group,
17 they don't -- they don't have an operating office. They all do
18 their business through Genel Denizcilik Nakliyatı; Geden Lines.
19 They are the people that have the chartering department, the
20 technical department, the operations department, the insurance,
21 the accounting, the marine department, and all of the other
22 functions that the company in the business of shipping needs
23 to, to do in order to survive. They are common. They are
24 performed by Geden Lines, Genel Denizcilik. They have -- they
25 have this in every loan agreement with the banks. You will

1 find that. They are imposed and required to be the managers.
2 Geden did not want to cede this piece of the pie to anybody
3 else, a third party, another ship management company, like
4 V.Ships. No; they had to bring their own ship management
5 company, because why? Because, your Honor, there is money in
6 this business. That's why. They charge, I think, in excess of
7 \$20,000 a month for each ship. But also they've got the
8 control. They've got the ships, they've got the papers, they
9 have the pencils, and they have the business.

10 Now, another thing that is a characteristic in veil
11 piercing companies that courts take into account is financing
12 passing between the companies. We needn't belabor the point
13 because, your Honor, we saw it. We saw documents, and I'm sure
14 we haven't seen all of the documents, that the financing was
15 arranged by Geden Holdings Limited, by Mr. Tugrul Tokgoz,
16 Mr. Mehmet Mat. Now, maybe there will be further discovery, we
17 hope, that will open this, because we've seen a very small
18 glimpse, and we had to use a subpoena to get that. Our
19 opponents did not produce it voluntarily in discovery. The
20 predecessor company organizes and sets up a successor. You
21 have the evidence before you, your Honor. They were -- they
22 were talking Advantage Tankers and they testified that they --
23 they reserved the name of Advantage Tankers, the Geden Lines
24 people, Tokgoz and Mat, before the company even existed. But
25 they went and reserved that name. So, who organized them?

1 Geden Holdings. Same people. Karamehmet.

2 Another characteristic is that the successor
3 corporation receives no other business except that that the
4 predecessor allows. We went over this; we're not going to go
5 over it again, your Honor. We referred to the consent letter
6 in which the predecessor company set up the business with
7 Shell. That's it. They made a commitment for five years.

8 Then, we talked -- we talked about the transfer of
9 the assets. That's one of the required, but the -- the
10 transfer requirements for piercing the corporate veil, that the
11 transfer of assets must be an arm's length transaction. We
12 went ad nauseam over this when I spoke a little while ago. I
13 mean, there are papers that show that it was not an arm length
14 -- arm's length transaction. It was not a sale; it was a
15 reorganization, as they call. That's their words. And they
16 signed it, too.

17 Corporate formalities not being observed. That's
18 another characteristic of calling for -- for -- in the cluster
19 of characteristics, that if they coalesce up to a certain
20 critical mass, I guess, the Court will say we'll pierce the
21 corporate veil. Corporate formalities not being observed.
22 When we examined Mr. Tokgoz about what happened, he told us.
23 He said, "Karamehmet told me to sell all the ships." "Do you
24 have this in a resolution of the board of directors and a piece
25 of paper?" He says, "No. I've sold 150 ships this way." So,

1 it's -- it's like he's the Czar. Mr. Karam Mehmet orders, and it
2 happens. And the ships are like his personal property. Where
3 are the formalities? Where are the resolutions of the board or
4 the -- the shareholders' authorization?

5 And the same thing, your Honor, happened with
6 Advantage Tankers. Mr. Tokgoz and Mr. Mat went into
7 discussions of restructuring debts, of obtaining loans in the
8 hundreds of millions of dollars, speaking on behalf of
9 something that didn't even exist; it was just word of mouth
10 maybe; Mr. Mat had not even talked with Ms. Williams. She
11 didn't know. She didn't know. There is nothing formal. All
12 of this business was done informally. I don't want to say
13 "under the table," but it was certainly done informally. There
14 are not documents that bear it out, except some correspondence,
15 and we haven't seen any of it, or very little.

16 And, then, the last criteria for veil piercing that
17 we have cited in our -- in our evidence and in our -- the
18 argument that we've made in our memorandum is the existence of
19 fraud, wrongdoing, or injustice to third parties. And in this
20 case it is very obvious. You have a successor company and the
21 predecessor, and you have a blueprint that was offered by
22 AlixPartners. They took it; they adopted it; it called about
23 restructuring of ownership. It's a boring, long document. But
24 if you look at ring-fencing, if you can search it, go to PDF
25 and you see ring-fencing of assets to avoid arrests and such

1 things, as in South Africa, because they were afraid they were
2 going to get it in South Africa rather than here. So, that was
3 a point.

4 So, let's sum it up. You have the Karamehmet Geden
5 group, and you have the Advantage Tankers group. Look what we
6 have here. We have the same ships, operated by the same
7 operator, managed by the same officers, having the same -- the
8 same shareholder interests, with the same officers and
9 directors, serving the same customer, Shell, and financed by
10 virtually the same banks. I would say, your Honor, we're -- we
11 are at the critical mass for piercing the corporate veil.

12 I'll thank you.

13 **THE COURT:** Thank you.

14 Any response?

15 **MR. QUARTARO:** Yes, your Honor.

16 Well, at the outset, I think after my colleague's
17 argument it's absolutely crystal clear at this point that Geden
18 Holdings is a central figure in the case. I mean, we -- we
19 just sat through, I don't know, 50-odd minutes of argument. I
20 lost track of the number of times that Geden Holdings was
21 mentioned, but I did lose track somewhere around 20. There is
22 no doubt this is a central player in the case. They're the
23 owner of the ships. It's very, very straightforward.

24 Now, before I hit a couple of the points, I also want
25 to make an overarching observation. What we have here is a lot

1 of -- is a lot of pointing at, "Well, this guy signed something
2 before the company was -- was created," or very sort of small,
3 minor issues. What we don't have is any dispute that there is
4 new money, new lenders, arm's length sale price for the
5 vessels, and actual payment thereof. There is no evidence
6 against that. Nothing. Nothing at all. The only thing that
7 we have against that is -- is my colleague, Mr. Gaitas, has
8 speculated that since some of these records come from a bank
9 where the family does business, I think he's trying to imply
10 that they're fraudulent. There is, again, no evidence
11 whatsoever of that other than counsel's speculation.

12 I would also point out that they're not all bank
13 records from the guarantee bank. Here, for example, is one
14 from HypoVereinsbank, part of UniCredit. I suppose the
15 Karamehmet family has penetrated there as well. Also
16 remarkable, the prescience of such a alleged fraud that they
17 created all of these documents contemporaneously with the
18 transactions that they report and then, I guess, left them in a
19 file awaiting the discovery -- discovery demands. It's a
20 little difficult to believe that that's -- that that's the
21 case, your Honor.

22 In any event, there is no challenge to that basic
23 fact. And since there is no challenge to the basic fact that
24 there is an arm's length sale price set for the vessels, that
25 there is new money that comes in, and that the money is

1 actually transferred to the various SPV's on the Geden side
2 that own them by the Advantage buyers, it's -- it's clear.
3 Defendants couldn't have been disadvantaged -- or plaintiffs
4 couldn't have been disadvantaged. They also, of course, make
5 no effort to address the fact that they actually got the
6 proceeds of some of these sales to pay some of their claims, as
7 I pointed out in my brief.

8 Now, I would also just add that, to the extent
9 plaintiffs have any claims against Geden Holdings, fine. To
10 the extent that that claim exists, they had the equity that
11 they could have gone after. They either -- Geden Holdings
12 either had equity in the ships or it had the cash. At no time
13 did it have neither. And that's a fundamental point, your
14 Honor. That's a fundamental point.

15 Now, with respect to presence, again, I would -- I
16 would disagree that the -- that relation back under Rule 15 is
17 permitted. It's a different cause of action. They're
18 asserting a delivery complaint and a condition complaint versus
19 a failure to pay charter hire. They're very different issues.
20 They're very different complaints and they're different
21 arbitrations. The fact that that complaint is filed on
22 November 20 and that there is absolutely no argument that Geden
23 Holdings did not have an agent in place in the Southern
24 District of Texas at that date, not to mention all of the other
25 stuff -- but, again, I don't think we necessarily need to get

1 to that -- that it's fatal to the Rule B case, assuming that
2 your Honor, agrees, of course, that Geden Holdings is a
3 necessary party. My opponent, of course, glossed over that
4 fact; "Well, we don't really need to name them." I think it's
5 obvious at this point why they're not named. It's crystal
6 clear.

7 Now, let's go on over a couple of points, and I'll
8 try not to go too long. I don't think there's really all that
9 many that -- that I need to -- that I need to address. One
10 thing I would comment on though, as a general matter, we made
11 an effort in our evidentiary brief to cite evidence. The only
12 cases that we referred to were cases that were cited in our
13 motion to dismiss. Defendants have now -- or plaintiffs have
14 now added a number of new cases to their evidentiary brief.
15 I'm not quite sure how your Honor wants to handle that. I
16 haven't had an opportunity to review them, although I've seen
17 them cited, but I would say it's not appropriate to add case
18 law during an evidentiary hearing. We've already briefed the
19 law to your Honor. But, in any event, I'm not sure that there
20 is actually all that much difference between the legal
21 positions in our motion to dismiss and -- and the new cases
22 that -- that plaintiffs are citing.

23 My opponent makes a -- a number of suppositions that
24 I think ought to be pointed out. He speculated, for example,
25 that Emin Karam Mehmet wouldn't be able to get credit because of

1 his legal problems in Turkey. First, they asked that question;
2 he asked Mr. Mat that question during his deposition. Mr. Mat
3 testified these problems have been going on for over a decade,
4 and Geden Holdings has literally received billions of dollars
5 in financing during that time. And, your Honor, I think the
6 plain fact is that a sophisticated international bank is
7 perfectly capable of looking at a company or at a -- like, the
8 Cukurova Group or looking at the individual behind it, like
9 Emin Karamehmet, and seeing that the guy's got political
10 problems with the leader of a country that has been having an
11 increasing number of problems with people that own media
12 enterprises in that country. I don't think there is any reason
13 to cast doubt on that, and I think if your Honor, you know,
14 looks at -- looks at the Mehmet Mat testimony, you'll see that
15 he testifies they got all kinds of credit during that time, you
16 know, notwithstanding these allegations; which, by the way,
17 your Honor, have been levied, tried, dismissed, levied again,
18 tried, dismissed, gone back up on appeal, come back down. The
19 implication of political interference in this case is
20 impossible to avoid, and, in fact, that's what Ms. Williams
21 testified to when she was asked a couple of questions about it.
22 Not that she's a lawyer, but, of course, she knows what's
23 happening with her father.

24 My opponents have alleged that Ms. Williams is a
25 straw man. I think "straw woman" probably would be a more

1 appropriate term, but, nevertheless, there is absolutely no
2 evidence of it. There is no evidence of it. If that's the
3 case, how does she put 196-odd million dollars into the
4 Advantage companies? That doesn't work. That doesn't make
5 sense. Why does she look at various risk structures? Why does
6 she contemplate first a joint venture with NSF and
7 Centerbridge? That doesn't fall through; here's sort of
8 another iteration based on the amendment of the Shell charters,
9 as I testified earlier, the risk factor goes down, and she goes
10 in -- you know, she goes in for the entire investment. But
11 this is a progression. This isn't simply a, "Oh, Dad needs to
12 get rid of some tankers; quick, let's gin up some documents."
13 There's thousands of pages of paper here.

14 Now -- now, with respect to the -- the timeline on --
15 on the formation of companies, I mean, frankly, it's almost a
16 ridiculous argument. What the plaintiffs would have the Court
17 believe is that for any entity, for any people to get into
18 business, the first thing they've got to do, got to form a
19 company, got to fully fund it, got to hire employees, have to
20 get it all in place. "Now that it's in place, I can go out and
21 see if there is a market. Now that it's in place, I can see if
22 I might get a loan." That's just not how business works.
23 Nobody incurs those upfront fees without knowing they've got
24 something there. And that's all that happened in this case,
25 your Honor. Actually happened twice. Happened with future

1 holdings first, for the joint venture vehicle with NSF and
2 Centerbridge; then it happened again with Forward Holdings when
3 Ms. Williams decided that she was going to make the entire --
4 the entire investment.

5 I think -- again, I think the -- the relation back
6 issue is -- is probably -- is probably squarely covered by the
7 differing allegations between the underlying complaint and the
8 current one. And I would point out again, as I did in my
9 initial argument, I fail to see how a cause of action that did
10 not exist when the initial complaints were filed could relate
11 back. I mean, it doesn't -- you know, that just doesn't --
12 that just doesn't line up.

13 I think the only piece of evidence that I really
14 would sort of challenge or I would challenge the conclusion is
15 this Gaitis DAC (indiscernible) Exhibit 4, and, unfortunately,
16 your Honor, I was no more enthusiastic about lugging a large
17 number of exhibits to the court than your Honor. But,
18 nevertheless, I think I'm familiar with this particular
19 document. And all I would say is that it's obvious that Geden
20 Holdings could realize a better price for the vessels it was
21 selling if they were under a charter to a gold standard
22 charter. And, in fact, that raises the price of the assets.
23 It's simply respon -- I mean, that just makes -- makes sense.
24 Obviously, you want to try and get as much out of it as you
25 can. And, again, that's something that ultimately inures at

1 least partially to the benefit of the plaintiffs because it
2 provides a pool of cash that, incidentally, they do not dispute
3 they were paid from.

4 Many of the other comments that my opponent made
5 really, I think, go back to sort of the introductory facts that
6 I laid out for your Honor. We have an attempted bond issuing
7 by Geden -- bond issuance by Geden Holdings that doesn't work.
8 We have an attempted financial restructuring their lenders
9 rejected. Not virtually the same lenders; there's only
10 three -- two or three common lenders between the two groups.
11 There's just not that many shipping banks. But it's critical.
12 It's not the same group of banks. It's new money. It's new
13 lenders. It's a new loan agreement. That's a very important
14 fact. It's not a rollover (indiscernible).

15 And I guess the only other thing that I would point
16 out is the fee letter. Yeah, that's, obviously, addressed to
17 Advantage Tankers. Now, whether it existed or not, clearly,
18 all the banks are trying to do -- and this is actually quite
19 common in shipping, although I don't think there is a lot of
20 evidence on this particular point before the Court -- it's very
21 common in shipping and probably in other businesses, too. A
22 bank doesn't want to, believe it or not, pay its lawyers, who,
23 obviously, work very hard, long hours, and deserve every penny
24 that they're paid, to draft complex loan agreements if they --
25 if the bank doesn't know that it's got a deal. And, so, it's

1 very common for them to say, "Look, we'll instruct our guys;
2 we'll get the documents going, but that's on your bill. You've
3 got to promise that you're going to pay." Notably, that letter
4 is addressed to who? It's addressed to Advantage Tankers.
5 Maybe Mr. Mat didn't, you know, focus on the signature line or
6 whatever, but the important thing is, who were they looking to
7 have pay that 200 grand, Geden or Advantage Tankers? Advantage
8 Tankers, or Holdings. And that's -- that's why the fee letter
9 is made out to them. Critically, they did not explore,
10 although they could have during the deposition testimony, who
11 actually paid that money. If they had, they would have learned
12 it was Ms. Williams.

13 I guess my -- my sort of final point in response to
14 my colleague's comments and arguments -- it's probably two-
15 fold. One, he conceded during his argument -- he tried to
16 cover it, but he conceded. He said, "Transfer of assets from
17 the Karamehmet Group." What does he mean by that? Let's --
18 let's go back to my favorite concrete print visual, transfer of
19 assets from Geden Holdings (indiscernible) defendant, again.
20 Now, we say Karamehmet Group, but there is no doubt, looking at
21 the documents, that it was Geden Holdings that sold all of
22 these vessels, and he tries to characterize it as an assetless
23 company that -- that goes into a drawer, right? Except that at
24 one time they held the shares of 50 to 60 SPP's, right? Each
25 one owning an oil tanker. Why, just the ones that we're

1 talking about transfer today totaled \$600 million in ships.
2 That's hardly an assetless company that exists in a drawer.
3 Interestingly, he also mentioned his client thought they were
4 of sufficient substance; they took a guarantee from them. So,
5 they're issuing guarantees, they're owning ships, they're
6 chartering them. It is a holding company, that's true, but
7 that's the purpose of the holding company is to hold the shares
8 of the special purpose companies that it owns.

9 I haven't gone through and gotten any sort of
10 valuations over the years, but, at a very minimum, as we can
11 see, just looking at the 11 black oil tankers that -- that are
12 at issue today, we've got \$600 million in assets sitting right
13 there, and I'm not counting the other 45, 50 ships that they
14 owned at one time. Admittedly, they got into difficulty and
15 they had to sell them, but back in '07, '08, '09, that wasn't
16 the case. And, unfortunately, the business hasn't gone well.
17 It has been a tough economy for shipping.

18 And I think -- I think kind of the last -- the last
19 point is -- is really back to Genel. You know, Genel
20 Denizcilik is a third party technical manager. You'll see in
21 Exhibit 1 to our evidentiary brief Mr. Tokgoz mentions, among
22 other things, that Genel provides these services, not just to
23 Geden-owned ships when Geden owned ships, not just the 11 ships
24 that are owned by Advantage. They provide these services to
25 all kinds of owners, including at least two that are traded

1 on -- that are publicly traded in the United States. So, this
2 isn't sort of some little in-house office where it's -- you
3 know, they're -- they're playing some sort of shell game with
4 the papers. It's a legitimate business; it offers its services
5 to third parties. Interestingly enough, identical to what the
6 plaintiffs do as their own business line.

7 That blurring of the lines of Genel and Geden Lines
8 is exactly what I had noted at the beginning was going to
9 happen. And, again, it's -- it's just fascinating -- I wish I
10 had been able to keep full track -- that during my opponent's
11 argument he mentioned -- he focused almost exclusively on Geden
12 Holdings. I mean, it's -- it's obvious that that's -- that's
13 the party that ought -- that ought to be here. But whether
14 it's here or not, there is no evidence that, other than
15 speculation, that counteracts the facts or counter -- is
16 countervailing to the facts, to the record that's produced,
17 that shows cash payment for the ships to Geden Holdings by
18 Advantage. There is nothing, other than speculation, that
19 flies in the face of those bank records. There are dozens and
20 dozens of pages of them. Counsel's speculation that those are
21 somehow made up or fraudulent, simply meritless, your Honor.
22 There is just no evidence of that other than speculation.

23 What happened here is they thought they were going to
24 wind up with a situation where Ms. Williams knew nothing about
25 shipping, there was no evidence of money coming in, just a

1 change of title. Instead, there are 6,000 pages of documents,
2 including the loan agreements, money invested into the
3 Advantage Tankers through Forward Holdings, documents including
4 memorandums of agreement, bills of sale, all of the
5 contemporaneous documents one would expect from a transaction
6 of this size and significance. It's pretty much all there. Is
7 it perfect? No. It's not perfect. Is there a letter --
8 incidentally, written by a non-party to this proceeding that
9 may be misaddressed or have a wrong (indiscernible)? Of
10 course. And that happens. But, again, we're talking total
11 seven-odd thousand pages of documents. Not every document is
12 perfect. But the sum and substance of this transaction has not
13 been challenged with any evidence. And I think that is the
14 most important thing that's come out from this discovery
15 process.

16 I don't have any further rebuttal, your Honor. I
17 would thank the Court again for its time. I would thank the
18 Court for entertaining our arguments, especially given the --
19 the procedural mishmash that we have.

20 **THE COURT:** You --

21 **MR. QUARTARO:** I do hope that between plaintiff's
22 counsel and myself we have been able to straighten that out. I
23 do sincerely believe, and I know my opponents sincerely
24 believe, that we have an active issue before your Honor, and we
25 would be grateful for the Court's resolution. Thank you.

1 **THE COURT:** Did you express an interest in responding
2 to additional cases that the plaintiff has submitted for me to
3 consider?

4 **MR. QUARTARO:** Well --

5 **THE COURT:** Do you want to --

6 **MR. QUARTARO:** -- I think if your Honor is going
7 to --

8 **THE COURT:** Do you want to do more briefing?

9 **MR. QUARTARO:** I'm sorry, your Honor?

10 **THE COURT:** Do you want to do additional briefing?

11 **MR. QUARTARO:** I'd love to do additional briefing,
12 your Honor. Perhaps -- perhaps we can leave it like this, if
13 it's acceptable to the Court. I don't think there's too many
14 cases in addition to what's been cited in the motion to
15 dismiss. I think I -- I took a very quick run-through, and I
16 believe it's about four. *Bridas* two, the two he read into the
17 record, and I believe that there is a fourth. Of course, we
18 focused on the evidence -- on the evidence in the evidentiary
19 argument. Frankly, I don't know if I'm even at odds with any
20 of the case law that he's cited. So, if your Honor would
21 entertain -- and I think what I would like to do is have an
22 opportunity to look at those cases, and if we have a different
23 reading of them, we'll keep it to a very short letter brief,
24 and we'll get it to your Honor by Friday. It may be that there
25 is no letter brief. Again, you know, for example, the *Oxford*

1 factors; I mean, that's -- we're basically in agreement on
2 that. *Bridas* one, *Bridas* two; I think we're pretty much in
3 agreement on the applicable case law, and I don't want to
4 inflict either additional briefing on your Honor or, frankly,
5 the bills for it on my client. Perhaps that's a reasonable
6 response to the addition of additional case law in an
7 evidentiary brief.

8 **THE COURT:** I think it is. I'd like you to have a
9 chance to comment on something you didn't -- you feel like you
10 didn't get a chance to comment about.

11 **MR. QUARTARO:** Thank you very much, your Honor.

12 **THE COURT:** But I like your plan.

13 **MR. QUARTARO:** Okay. Thank you. Well, if we do have
14 any opposition to that or -- or, shouldn't even say
15 "opposition" -- any observations on it, we will submit that by
16 a -- is a letter brief acceptable, your Honor?

17 **THE COURT:** It is.

18 **MR. QUARTARO:** Thank you. We will submit that by --
19 by Friday.

20 **THE COURT:** All right. Thank you.

21 **MR. QUARTARO:** Thank you.

22 **THE COURT:** Do you have more comments?

23 **MR. GAITAS:** Very, very briefly, your Honor.

24 One thing is I -- I would remind my friend that
25 briefs were due by 12 noon I -- yesterday. I agree that she

1 can (indiscernible) any time she wants. But in response to
2 that, she's going to have to expect, when we get his -- his
3 briefing, that we're going to -- we're going to have to read it
4 and we'll see there, but he makes reference to some things that
5 made reference to case law. So, that's why we -- we cited one
6 case, actually, or two. So, we're happy --

7 **THE COURT:** If you have to make a comment on his
8 comments, that's perfectly acceptable to me.

9 **MR. GAITAS:** Yes.

10 **THE COURT:** But I guess it's cheaper for your clients
11 if you make a letter brief, which is --

12 **MR. GAITAS:** I agree. I fully agree.

13 **THE COURT:** -- just fine with me. It's just fine
14 with me.

15 **MR. GAITAS:** There is another -- another thing that
16 maybe your Honor would want to consider. I have seen, in
17 response to discovery, documents evidencing, supposedly, bank
18 transfers. They are photocopies. They are from '13. I don't
19 know in whose -- if they are genuine or not. Geden Holdings
20 Limited is here. They can be ordered to produce originals;
21 they can be ordered to send a letter to their bank to give us
22 access to these documents. The same thing with -- with --
23 well, Geden Lines is not here, but with Geden Holdings,
24 certainly they are subject to the jurisdiction. We may be
25 asking the Court for a subpoena on this that will supplement

1 this information, because, frankly, all we have is photocopies.
2 And I don't know how genuine they are, really. And I don't
3 think you can tell if it's genuine, because I could make one on
4 my -- on my scanner at my house. So, today. These are people
5 beyond -- beyond the borders of the United States. They are
6 not subject to sanctions, so let's have perhaps an order to
7 that effect.

8 **THE COURT:** You're asking for an order? For Geden
9 Holdings to provide you with bank documents.

10 **MR. GAITAS:** Original -- original documents in
11 their -- in the electronic form, and the movement of funds in
12 that bank account subsequent to the sales. Where did the money
13 go? That's fair; because they also raised the point that --
14 that they're solvent, they've got \$300 million now.

15 **THE COURT:** Have you subpoenaed them, Geden Holdings?

16 **MR. GAITAS:** I subpoenaed them for other documents.

17 **THE COURT:** Other documents.

18 **MR. GAITAS:** Yes; but not these.

19 **THE COURT:** Okay.

20 You look like you don't like that idea.

21 **MR. QUARTARO:** Your Honor, we've had ten-odd weeks of
22 discovery; he served a subpoena on this entity already; they've
23 responded. I -- frankly, I don't see (a) a need for additional
24 discovery; (b) you know, I think counsel has to articulate
25 something beyond the, "Naaah, I -- this could be fake." I

1 mean, frankly speaking, we could do the same with every single
2 document they have, and we can spend the next 10 years
3 validating every document that's been produced so far without
4 even getting to any new ones. There has got to be some
5 articulable basis to believe that the records that have been
6 produced -- frankly, what he's saying is they're fraudulent.
7 And there's got to be some articulable basis other than -- I
8 mean, frankly, it's almost a Jim Carrey moment. "I don't like
9 the evidence, your Honor." "Well, why not?" "It's bad for my
10 client." There has got to be something beyond speculation,
11 especially for a second subpoena, your Honor.

12 Also, of course, I have to point out the concession.
13 Geden Holdings is present in the Southern District of Texas.
14 That's one of our points, of course, your Honor, and I'm very
15 happy to hear my opponent concede it.

16 Thank you.

17 **THE COURT:** All right. We don't have a -- any
18 subpoena that you've issued to enforce right now.

19 **MR. GAITAS:** I beg your pardon, your Honor? I didn't
20 hear you.

21 **THE COURT:** I am -- I don't -- I don't understand
22 that you're asking me to enforce any subpoena that you have
23 issued.

24 **MR. GAITAS:** No. I'm talking about a subpoena that
25 would go to producing original documents in electronic form,

1 because these documents they have produced are questionable;
2 they involve the same interests, same bank; issues, really,
3 issues of this case. And you don't have the evidence -- their
4 defense is that these are arm -- arm's length transactions.
5 They better back it up, because I don't think these documents
6 evidence that.

7 **THE COURT:** Okay. Well, I'd have to -- I have to
8 rule based on the documents in front of me.

9 **MR. GAITAS:** Yes.

10 **THE COURT:** Anything else? Any other comments?

11 **MR. GAITAS:** No.

12 **THE COURT:** Okay. All right. So, I guess my work is
13 cut out for me.

14 **(Laughter)**

15 **THE COURT:** But I appreciate the enlightenment. That
16 was very helpful.

17 I -- I have a copy -- this is my little green copy of
18 Schedule 11 original chart. Do I have a copy of the alleged
19 corporate structure in all of these?

20 **MR. QUARTARO:** You are -- well, first, in this age of
21 modern technology, actually, I have a fantastic app on my phone
22 which I recommend to everyone, and I -- I think I -- I showed
23 Mr. Chalice (phonetic) when we were in London -- where I can
24 take a picture of that and it will turn it into a PDF and e-
25 mail it to your Honor.

1 **THE COURT:** Okay.

2 **MR. QUARTARO:** Which is just a great thing to have on
3 your own iPhone. It's called TurboScan. I'm happy to do that
4 right now, perhaps e-mail them to you, Ms. White, and you
5 can -- would that be acceptable?

6 **THE COURT:** That would be great. I just would like
7 to be able to look at it and while I'm thinking about all this.

8 **MR. QUARTARO:** I mean, I'm happy for you to take the
9 exhibits, but I'm sure you have more interesting evidence.

10 **THE COURT:** I have all the exhibits. Is that chart
11 in the exhibits already?

12 **MR. QUARTARO:** I believe so. I believe it's actually
13 in the universal maritime prospectus. It may also be in the
14 AlixPartner outline. And, of course, this is the very first
15 page, the Quartaro DAC X-1. But why don't we -- why don't I
16 just send you a quick PDF of this and --

17 **THE COURT:** That would be great.

18 **MR. QUARTARO:** -- and then you have it.

19 Ms. White, thank you very much. Appreciate that.

20 **MR. GAITAS:** Can I have a look at the exhibit?

21 **MR. QUARTARO:** Sure.

22 **THE COURT:** Yes. Please do.

23 **MR. QUARTARO:** Do you want me to copy you on the e-
24 mail, George?

25 **MR. GAITAS:** Uh --

1 **MR. QUARTARO:** And you'll have the PDF as well.

2 **MR. GAITAS:** Um, I'm trying to --

3 **THE COURT:** I think you should. I think it's a good
4 idea.

5 **MR. GAITAS:** Very well.

6 **MR. QUARTARO:** It's always a good idea.

7 **THE COURT:** Please do.

8 **MR. GAITAS:** Yes. Your Honor, since I had no view of
9 this exhibit during the hearing, I want to -- and I wanted to
10 point out this --

11 **THE COURT:** Please do.

12 **MR. GAITAS:** -- the Advantage Arrow and the Advantage
13 Avenue, they were on the same loan agreement --

14 **THE COURT:** Okay.

15 **MR. GAITAS:** -- with -- with the bank. Now, these
16 prices that are shown as sale -- shown as sale price here, we
17 have the memorandum of agreement for the sale and we have the
18 bill of sale, and they do reflect these prices. However, in
19 the bank loan documents -- this was brought out in deposition;
20 it's in our brief -- the amount of money shown for the sale
21 price in the bank financing documents, the contract price, is
22 substantially less. It's about \$9 million less. So, this
23 isn't entirely truthful or it is contradicted by their own
24 document -- their own banker's documents, their own financing
25 banker's documents. And that's something that needs to be

1 looked into.

2 **THE COURT:** On both vessels?

3 **MR. GAITAS:** On both the Advantage Avenue and the
4 Advantage Arrow, that the sale price --

5 **THE COURT:** Sale price is different --

6 **MR. GAITAS:** -- it is --

7 **THE COURT:** -- from that --

8 **MR. GAITAS:** Yeah, in the --

9 **THE COURT:** -- charge.

10 **MR. GAITAS:** -- in the bank financing documents.

11 Yes.

12 **THE COURT:** I understand.

13 **MR. GAITAS:** It's substantially different.

14 **THE COURT:** Okay.

15 **MR. GAITAS:** We point it out in our brief, so -- and
16 the payment of debt is -- is accurate.

17 **THE COURT:** Right.

18 **MR. GAITAS:** Payment of debt is accurate. And the
19 equity is not accurate.

20 **THE COURT:** It would be higher.

21 **MR. GAITAS:** Yeah, it -- it should be lower.

22 **THE COURT:** It should be lower.

23 **MR. GAITAS:** It should be lower, according to the
24 bank records. According to the bank financing records, it's
25 substantially lower.

1 **THE COURT:** So, the sale price was lower.

2 **MR. GAITAS:** Yes. And if this is -- this is how much
3 money was transferred between the banks, it's questionable what
4 the two companies are doing, really, what money -- what are
5 they paying for.

6 **MR. QUARTARO:** Just want to be clear about what
7 Mr. Gaitas is saying.

8 **THE COURT:** All right.

9 **MR. QUARTARO:** He seems to be saying -- and correct
10 me if I'm wrong --

11 **MR. GAITAS:** Yes.

12 **MR. QUARTARO:** -- that this, in fact, was the sale
13 price; that the bank records that were produced, in fact,
14 show -- now, you can disagree with their authenticity; I
15 understand that -- but the records that have been produced so
16 far show the payment of that debt and that amount of equity to
17 Geden Holdings.

18 **MR. GAITAS:** No.

19 **MR. QUARTARO:** Hang on. Hang on. Let me - let me
20 clarify what you're saying.

21 **MR. GAITAS:** Yeah.

22 **MR. QUARTARO:** What you seem to be saying is, is that
23 the loan agreement, the schedule to the loan agreement that
24 lists the amount of -- of the loan being provided to the
25 Advantage buyers is at odds with these numbers. Is that right?

1 Do I have that right?

2 **MR. GAITAS:** No. It is very simple. That -- and you
3 will see, your Honor; it's in the exhibits. The schedules to
4 the loan agreements show a sale price which is substantially
5 lower than the bill of sale, bill of sale M.Y. (indiscernible)
6 agreement. Bill of sale and M.Y. are private documents between
7 Advantage Tankers and Geden Holdings. The other ones that the
8 bank has filed is public records in the Marshall Islands along
9 with the mortgage. And it shows a much lower price. So, these
10 prices here that are paid are according to this sale price if
11 you take out the loan repayment.

12 **THE COURT:** Oh.

13 **MR. GAITAS:** We're not at all sure why they would --
14 how could they pay this, because these sale prices are
15 contradicted in the bank loan documents. And the bank shows a
16 contract sale price much lower. And it was brought out in the
17 depositions, and we asked -- we asked Mr. Tugrul Tokgoz, and
18 said, "What is this? It's a discrepancy." We showed him the
19 records, and he said, "I have no clue." That's a quote. "I
20 have no clue." So, the authenticity of this is very much
21 questionable. And you will have to decide that, but you will
22 see before you the loan agreement documents show a different
23 sale price than the sale price that they show here.

24 **THE COURT:** I'll look at the exhibits.

25 **MR. QUARTARO:** I mean, I'm sorry; I've lost that --

1 I've lost the argument.

2 **THE COURT:** Okay.

3 **MR. QUARTARO:** So, I'll have to look at the exhibits.

4 **THE COURT:** I'll look at the exhibits.

5 **MR. GAITAS:** You see, if I -- they didn't pay --

6 **MR. QUARTARO:** But Quartaro DAC-1 --

7 **MR. GAITAS:** Yeah.

8 **MR. QUARTARO:** -- has all of the payment records
9 there. There may be some discrepancy in one of the loan
10 agreements; I don't know. I'll have to take a look at it.

11 **THE COURT:** Okay.

12 **MR. QUARTARO:** But the actual remittance of money and
13 the wire transfer records are all Exhibit 1, and those all line
14 up.

15 **MR. GAITAS:** Now --

16 **MR. QUARTARO:** There may be an underlying loan
17 agreement where a schedule is inaccurate; I don't recall. But
18 I do recall some testimony on that, and it sounds like that's
19 all before your Honor, so you've got the evidence, which is the
20 point of the discovery, and we can go from there.

21 **THE COURT:** I'll look at it.

22 **MR. QUARTARO:** Thank you, your Honor.

23 **MR. GAITAS:** One more point is Mr. Quartaro talked
24 about wire transfers. There have been no wire transfers. None
25 of this was done by wire transfer. They're internal bank

1 documents. So, there was no money that went to a bank in New
2 York that does a clearing and then sending it on an
3 intermediary bank. It's not -- it is not really a wire
4 transfer. It's not a SWIFT. The documents they put before
5 your Honor are not SWIFT documents. They are internal Turkish
6 Bank records.

7 **THE COURT:** Okay.

8 **MR. GAITAS:** So --

9 **THE COURT:** Paul, did you want -- one of those
10 parties with a foreign name, we were -- you were promising to
11 spell that for us.

12 **MR. SPEAKER:** I -- I will. So, just like it's
13 pronounced.

14 **THE COURT:** Uh, yeah. That's -- that's no help.
15 Okay. Mr. Gaitas.

16 **MR. SPEAKER:** First of all, I wanted (indiscernible)

17 **MR. GAITAS:** Genel Denizcilik Nakliyatı.

18 **THE COURT:** Yes. Spell that one.

19 **MR. QUARTARO:** He got it.

20 **THE COURT:** Oh, he's got it.

21 **MR. QUARTARO:** Well, hope he's got it.

22 **MR. GAITAS:** He's got it.

23 **MR. QUARTARO:** He's -- we used to have it
24 (indiscernible).

25 **THE COURT:** Oh, he's -- he's quicker than me.

1 **MR. QUARTARO:** Yeah.

2 **THE COURT:** Thank you, Paul.

3 **MR. SPEAKER:** Right.

4 **THE COURT:** All right. Thank you, everybody.

5 **ALL:** Thank you, your Honor.

6 **THE COURT:** Okay. Good luck catching those planes.

7 **MR. QUARTARO:** Thank you.

8 **THE COURT:** All right. The hearing is adjourned.

9 **ALL:** Thank you, your Honor.

10 **(Proceeding was adjourned at 4:10 p.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is positioned above a horizontal line.

July 12, 2016

TONI HUDSON, TRANSCRIBER